(21,068.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 101.

LUTCHER & MOORE LUMBER COMPANY AND H. J. LUTCHER, PETITIONERS,

vs.

WILLIAM H. KNIGHT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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United States Circuit Court of Appeals, Fifth Circuit.

No. 1629.

LUTCHER & MOORE LUMBER COMPANY, Plaintiff in Error,
versus
WILLIAM H. KNIGHT ET AL., Defendants in Error.

Error to the Circuit Court of the United States for the Western District of Louisiana.

[Original Record Filed December 10, 1906.]

U. S. Circuit Court of Appeals. Filed Feb. 5, 1907.
CHARLES H. LEDNUM, *Clerk.*

1 *Transcript.*

No. 276.

WILLIAM H. KNIGHT ET AL.
versus
LUTCHER & MOORE LUMBER COMPANY ET AL.

Appealed from the United States Circuit Court, Fifth Circuit, Western District of Louisiana.

Alexander & Wilkinson, Holland & Holland, Mason Williams, Attorneys for Defendants, Plaintiffs in Error.
A. J. Murff, M. J. Cunningham, Jr., Attorney- for Plaintiffs, Defendants in Error.

To the Honorable Judge of the Twelfth Judicial District Court of Louisiana, sitting in and for the Parish of Vernon:

The petition of William H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight, wife of James Durham, and James Durham for the purpose of aiding, authorizing and assisting his wife herein, with respect represents that your four first named petitioners are the children and heirs at law of Mrs. Mary Cain, deceased, wife of William J. Knight, petitioner's father; that their said father and mother married on the 29th day of July, 1875, that their said mother died on the 7th day of August, 1885, leaving property in community with her said husband, William J. Knight, and four children and heirs, your petitioners; that during the marriage between their mother and father and during the existence of said community, to-wit, the 28th day of July, 1882, their said father, William J. Knight, bought from J. A. Lovett and D. R. Knight, composing

the firm of Knight & Lovett, the following tract or tracts of land situated in the Parish of Vernon, to-wit: South half of Section Thirty-three (33), in Township One (1), south of Range Eleven (11), West; Southeast quarter of Northwest quarter, Southwest quarter of Northeast quarter, West half of Southeast quarter and East half of Southwest quarter of Section Five (5); West half of Southwest quarter of Section Seventeen (17); Northeast quarter of Southeast quarter of Section Eighteen (18); East half of Northwest quarter and Northeast quarter of Northeast quarter of Section
2 Twenty (20); North half of North half of Section Twenty-one (21); Northwest quarter of Northwest quarter of Section Twenty-two (22); South half of the Northeast quarter, Southeast quarter of Northwest quarter, West half of Southwest quarter, Northeast quarter of Northwest quarter & the Northwest quarter of Southeast quarter of Section Twenty-three (23); Southwest quarter of Northwest quarter of Section Twenty-four (24), and the Northwest quarter of the Northeast quarter of Section Thirty-four (34); all in Township Two (2), south of Range Eleven (11), West, & that their said father continued to own said lands up to and at the time of the death of their said mother, and they constituted a part of the community aforesaid left by her; that immediately upon the death of their said mother, on August 7th, 1885, your petitioners, as the heirs at law of their said mother, became the owners in indivision of an undivided half interest of said lands, their father being the owner of the other half, but without right or authority to dispose of petitioners' half; that after the death of petitioners' mother, but without opening her succession and without any legal right so to do, their said father, William J. Knight, by three several acts of sale made February 5th, 1887, February 7th, 1887, and April 13th, 1889, sold and disposed of all of said lands, when he owned only an undivided one-half interest therein; that all of said sales made by their said father, as to petitioners' undivided half interest, were and are absolutely null; that all of said lands are now held by Henry J. Lutcher and Lutcher and Moore Lumber Company, the latter, a corporation domiciled at Orange, Texas, of which Henry J. Lutcher is president, and the former a resident of Orange, Texas, and both non-residents, and, therefore a curator *ad hoc* should be appointed to represent them herein; that petitioners are the legal and *bona fide* owners of an undivided one-half of all said land, as to which half the possession of said Lutcher & Moore Lumber Company, and the said Lutcher is without legal right, notwithstanding said pretended acts of sale under which they hold and as to petitioners' half, they are mere trespassers; that petitioners' father, William J. Knight, married on the 18th day of June, 1886.

Wherefore petitioners pray that a curator, *ad hoc*, be appointed to represent the non-resident defendants; that they be cited according to law, for judgment against them recognizing petitioners as owners of and undivided half interest in said lands and putting them in possession thereof and for general relief.

M. J. CUNNINGHAM, Jr.,
Attorney for Petitioner.

3 Let W. B. Williamson be and he is hereby appointed curator, *ad hoc*, to represent the absent defendants, Henry J. Lutcher and Lutcher and Moore Lumber Company, and let said defendants be cited according to law.

Done, ordered and signed on this the 9th day of March, A. D. 1903.

J. B. LEE, *Judge.*

I hereby accept the appointment of curator, *ad hoc*, to represent the non-residents, Henry J. Lutcher and Lutcher & Moore Lumber Company herein.

This 11th day of March, A. D. 1903.

W. B. WILLIAMSON.

Filed March 11th, 1903.

J. J. HICKS,
Clerk, 12th District Court.

* * * * * * *

Petition for Removal to Circuit Court.

In the District Court of Vernon Parish, State of Louisiana.

Petition for Removal to the Circuit Court of the United States, Western District of Louisiana.

WM. H. KNIGHT, JOHN A. KNIGHT, Miss STELLA KNIGHT, Mrs. FLORENCE KNIGHT, Wife of James Durham, and JAMES DURHAM, Plaintiffs.

vs.

HENRY J. LUTCHER & LUTCHER & MOORE LUMBER COMPANY, Defendants.

To District Court, Vernon Parish, Louisana:

Your petitioners, the Lutcher & Moore Lumber Company and Henry J. Lutcher, show to this Honorable Court, that they are the defendants and all the defendants in this suit, which is of a civil nature, and, that the matter and amounts in dispute in this case exceeds the sum or value of two thousand ($2,000.00) dollars, exclusive of interests and costs, and, that the controversy herein is between citizens of different —; that the plaintiff Wm. H. Knight was at the time of the commencement of this suit and still is a citizen of the

4 State of Louisiana, residing at Rosepine, Vernon Parish, in said state. That the plaintiff, John A. Knight was at the time of the commencement of this suit and still is a citizen of the State of Louisiana, residing at De Ridder, Calcasieu Parish, said state; that the plaintiff, Miss Stella Knight & Mrs. Florence Knight, wife of James Durham, and James Durham were each and all at the time of the commencement of this suit and still are citizens of the State of Louisiana, each and all residing at Leesville, said state.

That your petitioners, The Lutcher & Moore Lumber Company was at the time of the commencement of this suit and still is a citizen of

the State of Texas, and of no other state, residing in the City of Orange, in said state; and, that your petitioner, Henry J. Lutcher was at the time of the commencement of this suit and still is a citizen of the State of Texas, and of no other state, residing in the City of Orange, in said state; and, that neither of your petitioners are now nor were they ever a citizen or resident of the State of Louisiana.

That your petitioners desire to remove this suit before the trial thereof into the Circuit Court of the United States, Western District of Louisiana, and your petitioners offer herewith a bond with good and sufficient surety for their entering in said Circuit Court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court, if said Court should hold that this suit was wrongfully or improperly removed thereto.

And your petitioners further pray this Honorable Court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said Circuit Court of the United States, in and for the Western District of the State of Louisiana, and they will ever pray.

HOLLAND & HOLLAND,
Attorneys for Petitioners.

THE STATE OF LOUISIANA,
Vernon Parish:

I, J. A. Holland, being duly sworn, do say that I am a member of the firm of Holland & Holland, the attorneys for the petitoners in the above entitled cause; that I have read the foregoing petition, and know the contents thereof, and that the staements and allegations therein contained are true, and I verily believe.

J. A. HOLLAND.

5 Subscribed by the said J. A. Holland, in my presence, and by him sworn to before me, this the 26th day of March, A. D. 1903.

J. J. HICKS,
Clerk of Court.

Filed March 26, 1903.

J. J. HICKS, *Clerk.*

Know all men by these presents, That, we, The Lutcher & Moore Lumber Company and Henry J. Lutcher, as principals, and Thomas C. Wingate, as sureties, are held and firmly bound unto Wm. H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight, wife of James Durham, and James Durham in the penal sum of five hundred ($500.00) dollars, the payment whereof well and truly to be made unto the said Wm. H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight, wife of James Durham, and James Durham heirs and assigns; we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions, the said The Lutcher & Moore Lumber Company and the said Henry J. Lutcher having petitioned the District Court of Vernon Parish, State of Louisiana, for the removal of a certain cause therein pending wherein Wm. H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight, wife of James Durham, & James Durham are plaintiffs, and the Lutcher & Moore Lumber Company and Henry J. Lutcher are defendants to the Circuit Court of the United States, in and for the Western District of Louisiana.

Now, if the said The Lutcher & Moore Lumber Company, and the said Henry J. Lutcher, your petitioners, shall enter in the said Circuit Court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full f-rce and virtue.

Witness our hands and seals, this the 26th day of March, A. D. 1903.

THE LUTCHER & MOORE LUMBER COMPANY,
[L. S.] By HOLLAND & HOLLAND, *Ag'ts & Att'ys.*
[L. S.] H. J. LUTCHER,
[L. S.] THOS. C. WINGATE,
[L. S.] By HOLLAND & HOLLAND, *Ag'ts & Att'ys.*

6 Attest:

T. G. B. COX.
W. A. MOORE.

Filed March 26, 1903.

J. J. HICKS, *Clerk.*

Order for Removal.

No. —.

W. H. KNIGHT ET AL.
vs.
H. J. LUTCHER ET AL.

The defendants here rest*s*, having within the time provided by law filed this petition for removal of this case to the Circuit Court of the United States, for the Western District of Louisiana, and having at the same time offered his bond for $500, with Thos. C. Wingate, good and sufficient surety, pursuant to the statutes and conditions according to law. Now, therefore, this Court does hereby accept and approve said bond and send said petition, and does affirm that this case be removed for the time to the next Circuit Court of the United States, for the Western District of Louisiana, pursuant

to the statutes of the United States, and that all other proceedings of this Court be stayed.

(Signed) J. B. LEE, *Judge.*

[Indorsed:] W. H. Knight, *et als., vs.* H. J. Lutcher, *et als.* Order for Removal. Filed March 26, 1903. W. A. Winfree, Dy. Clerk.

Clerk 12th District Court, Vernon Parish, Louisiana, Leesville, La.

STATE OF LOUISIANA,
Parish of Vernon:

I, J. J. Hicks, clerk of the 12th Judicial District Court, in and for the Parish of Vernon, Louisiana, do hereby certify that the within and foregoing nine (9) pages is a true and correct copy of all the documents and papers filed, and the proceedings had in the case No. 533, of Wm. H. Knight, *et als., vs.* H. J. Lutcher & The Lutcher & Moore Lumber Co., on the docket of this Court.

7 Witness my official signature and seal at my office at Leesville, La., on this the 9th day of April, A. D. 1903.

[SEAL.] J. J. HICKS,
Clerk, 12th District Court,
Parish of Vernon, Louisiana.

Indorsed: No. 276. Wm. H. Knight, *et als., vs.* H. J. Lutcher, *et als.* Transcript from 12th Dist. Court, Vernon Parish, La. Filed March 11, 1903. J. J. Hicks, Clerk. Filed April 15th, 1903. E. C. Jackson, Dy. Clerk.

Default Against All Parties.

Minutes of Court, April 24th, 1903.

533.

WM. H. KNIGHT ET ALS.
vs.
H. J. LUTCHER ET ALS.

In the Circuit Court of the United States, for the Western District of Louisiana, at Shreveport.

In Law.

WILLIAM J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Now comes G. Bedell Moore made a party herein by the defendants, the Lutcher & Moore Lumber Co., by its first amended original

answer filed in this cause, and enters his appearance and adopts the first amended original answer of said defendants, and asks that his warrantors as set out in the defendants amended answer be cited to appear and defend this suit, and in case the defendants are evicted from any part of said land and judgment is obtained against him, he prays for a judgment against said warrantors, and for the taxes as set up in said amended answer of the defendants and for $500.00 attorneys fees incurred and paid herein and for all necessary orders for full and general relief.

DAVIS & WILLIAMS,
HOLLAND & HOLLAND,
Attorneys for Defendant, G. Bedell Moore.

Indorsed: No. 276. William J. Knight, *et al., vs.* The
8 Lutcher & Moore Lumber Company, *et al.* Original Answer of G. Bedell Moore. Filed Oct. 5th, 1903. E. C. Jackson, Dy. Clerk.

In the Circuit Court of the United States, for the Western District of Louisiana, at Shreveport.

In Law.

WILLIAM J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Now come the defendants in the above styled suit, and leave of the Court being first had and obtained, file this their first amended original answer in lieu of their original answer heretofore filed, and respectfully show:

I. That plaintiffs' petition discloses no right or cause of action against these defendants, and they pray that plaintiffs demands may be rejected at their costs, and for general relief.

II. Reserving the benefit of the above pleaded demurrer, should it be overruled, defendants deny generally and specially all the allegations contained in said petition, except what hereafter may be admitted.

III. They specially deny that plaintiffs' alleged father was ever married, except to the wife with whom he is now living, or that plaintiffs are the lawful heirs of any previous marriage.

IV. Defendants aver that the claims made by the plaintiffs herein are the alleged heirs of W. J. Knight, and his alleged previous wife, that the property herein sued for constitutes part of the community of acquets and gains of W. J. Knight and his alleged previous wife, is without foundation in fact or in law; but, defendants are informed and believe, and here allege the facts so to be, that the property sued for herein was the separate property of W. J. Knight, and that the same was a gift to him by his relative, Dan R. Knight and J. A. Lovett, the business partner of said Dan. R. Knight; that neither the community existing between W. J. Knight and his

alleged previous wife, nor W. J. Knight individually, paid
9 any consideration whatever for said property; that the cash consideration of $500.00 recited in act of sale between Dan R. Knight & John A. Lovett to W. J. Knight, was in fact not paid, and that the note of $1400 recorded in said act of sale was never executed by W. J. Knight, that the same was never paid and said note in fact never did exist, but, that said transfer of said property was a gift to W. J. Knight, and that the same was his separate property.

V. And defendants further allege that the title to said property was never in W. J. Knight, except as trustee for Dan R. Knight and J. A. Lovett; that at the time of and prior to the sale from said Dan R. Knight and J. A. Lovett to said W. J. Knight, on July 28, 1882; there was an agreement between the parties that said W. J. Knight should hold the title to said property as trustee, and for the benefit of said Knight and Lovett, and said W. J. Knight agreed at and prior to said sale that he would convey said land to Knight and Lovett, or their assigns whenever they directed or requested him to do so; that said W. J. Knight, paid Knight and Lovett nothing whatever for said land, and that he never executed any note therefor, but he, the said W. J. Kni[illegible] accepted said trust, and in pursuance of said agreement said property was conveyed to him. That afterwards, on April 13, 1889, at the special instance and request of said Dan R. Knight and J. A. Lovett, or at the special instance and request of Dan R. Knight, who had paid said J. A. Lovett for his interest in said land, and in furtherance of and complying with the terms of said agreement so to do, said W. J. Knight conveyed the title to said land to said H. J. Lutcher and G. Bedell Moore. That said sale to Lutcher & Moore was made at the request and under the direction of Dan R. Knight and J. A. Lovett, or one or both of them, and they received the consideration therefor, and that, therefore, said property and the title thereto, being received by said W. J. Knight charged with said trust, the community of acquets and gains existing between him and his alleged previous wife, had no interest in said property, and the plaintiffs herein acquired no interest in said property through their said alleged mother.

VI. That on April 13, 1899, the time of the sale of said lands by W. J. Knight to Lutcher & Moore, said W. J. Knight was married
10 to his present wife, and there was no evidence of record of a previous marriage or of the death of the alleged previous wife; that all of the sales effecting said land was duly and seasonably recorded in the proper books in the Parishes where the lands were located, and that so far as these defendants are concerned, said sales were executed in perfect good faith for valuable considerations duly paid, and with no notice or knowledge of any of the claims herein made; that said defendants had no knowledge whatever of any previous marriage of said W. J. Knight, or of the death of his alleged wife, and they had a right to rely as they did upon the faith and verity of the public records in the Parishes where the lands were located.

VII. And, if, the defendants are required further to answer

herein, they allege that the sale made by Dan R. Knight and John A. Lovett to W. J. Knight dated July 28th, 1882, and recorded in Book D, of the conveyances in Vernon Parish, records on pages 17 and 18, was never intended by any of the parties thereto, either then or after, to convey the real right or title in or to the property purported to have been conveyed and which is herein sued for; that no money belonging to said W. J. Knight or of the alleged community was ever paid to the vendors, and that no note or other obligations was ever in fact executed, or in fact received, and that said alleged note was never paid to any one. That said Dan R. Knight and John A. Lovett, at the time of said pretended sale, were engaged as partners in the mercantile and logging business in said Vernon Parish, Louisiana, and becoming financially embarrassed, they made said pretended sale for the sole purpose of screening and hiding said property from the pursuit of their creditors; that said property never became the property of said W. J. Knight or the alleged community, but always belonged to said Dan R. Knight and John A. Lovett, who never became divested of their possession or control of said property, until the sale made April 13, 1889, by W. J. Knight, John C. Knight and Viola P. Knight, to Henry J. Lutcher and G. Bedell Moore; that said Henry J. Lutcher and G. Bedell Moore bought the paper title held by said W. J. Knight, because he was the record holder of the title, but said W. J. Knight, and his alleged previous wife, and said Dan R. Knight and John A. Lovett knew at said time that said property still belonged to said Dan R. Knight and J. A. Lovett, and that the pretended same [sale] made July 28, 1882, to said W. J. Knight was a simulation and a fiction. That all the parties to said sale were very closely related, and that the proceeds of the sale to Henry J. Lutcher and G. Bedell Moore were divided between said Dan R. Knight and J. A. Lovett,
11 and that said last named parties advised, counseled and procured the said sale made to said Henry J. Lutcher and G. Bedell Moore, and that they reaped the benefits of the purchase price, and that their title has been validly conveyed to these defendants.

VIII. That defendant, Henry J. Lutcher is the owner in good faith of one undivided one-half interest in and to the property sued for herein, and that the Lutcher & Moore Lumber Co. is the owner of the other undivided one-half interest, except that neither party claims the N. 1/4 of N. W. 1/4, Sec. 23, T. 2, S. R. 11, W. That the Lutcher & Moore Lumber Co. bought of G. Bedell Moore, the one-half interest aforesaid with other lands, by act of sale April 31, 1901, and recorded in Calcasieu and Vernon Parishes, the latter record being found in Conveyance Book No. 1, page 1, *et seq.*, of the records of said Vernon Parish, and that said Co. is entitled to call in warranty said G. Bedell Moore, who lives in Bexar County, Texas, to defend*ant* this suit. That Henry J. Lutcher is entitled to call in warranty his vendors, W. J. Knight and John C. Knight, who reside in Vernon Parish, Louisiana, and Viola P. Knight, and her husband, Dan R. Knight, who reside in Natchitoches Parish, Louisiana, to defend his title in this suit, and in case of eviction from any

of the lands sued for herein said defendants are entitled to recover judgment against their respective vendors for the amount paid by them for said lands with five per cent. interest per annum from date of payment. That these defendants have paid in taxes since their said purchase, the sum of one thousand dollars, for which they should be reimbursed, if they are evicted from said lands.

Wherefore, defendants pray that plaintiffs' demands may be rejected at their costs by judgment in favor of defendant forever quieting said defendants in the ownership and possession of all of said lands, as by them acquired. But should the Court hold that plaintiffs are entitled to recover any of said lands, then defendants pray that they may have a judgment in their favor against all of the plaintiffs for the sum of one thousand dollars, being their proportion of the taxes paid by said defendants on said lands, and that said amount be declared a lien on said land. And defendants further pray for citation to G. Bedell Moore, W. J. Knight, John C. Knight and Viola P. Knight, and her husband, Dan R. Knight, and in the event the plaintiffs recover any of said lands defendants pray for a judgment against their respective warrantors for their proportionate amount of the purchase price
12 paid by said defendants to the parties herein called in warranty for the premises from which defendants may be herein evicted, with five per cent. per annum interest thereon from date of payment, and the sum of $1000.00 lawyers' fees incurred and paid in defending this suit, and for costs and all necessary orders for full and general relief.

HOLLAND & HOLLAND,
DAVIS & WILLIAMS,
Attorneys for Defendants.

Indorsed: No. 276. William J. Knight, *et al.*, *vs.* The Lutcher & Moore Lumber Company, *et al.* Defendants First Amended Original Answer. Filed Oct. 5th, 1903. E. C. Jackson, Dy. Clerk.

In the Circuit Court of the United States, Holding in and for the Western District of La., at Shreveport.

In Fifth Circuit for Western District of La., at Shreveport, Louisiana.

No. 276.

WILLIAM J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Now comes the plaintiff, by counsel, and demurs to that portion, if the defendants answer that in any way attacks the sale from Knight & Lovett, to W. J. Knight, of date July 28th, 1882, and moves and prays the Court to strike out that portion of the defendants' answer for the following reasons:

1st. The defendants, claiming title from W. J. Knight and Viola

Knight and J. C. Knight, both of whom bought from W. J. Knight, *et al.*, after sale, of sale of July 28, 1882, estopped from attacking the title of W. J. Knight, since they trace whatever title they have back to W. J. Knight, who received his title by virtue of the sale of July 28th, 1882, from Knight & Lovett.

2nd. That the question of the reality or simulation of said sale has already been passed upon in the suit of McIlhenny & Co., *vs.* D. R. Knight, *et als.*, (which was Knight & Lovett), and W. J. Knight, intervener, being No. 60, in the 12th District Court
13 of the State of La., holding in and for the Parish of Vernon, wherein all these parties were made parties, and where said sale of date July 28, 1882, was declared by the judgment in said suit to be a *bona fide* sale and not a simulation, which judgment is *res adjudicata*, as to said sale.

3rd. The defendants, not claiming to be creditors, nor relying on any deed from D. R. Knight or J. A. Lovett, or Knight & Lovett, show no interest or right to attack the said sale as simulated or otherwise.

Hence plaintiffs pray that portion of the defendants' answer which attacks the sale of July 28th, 1882, from Knight & Lovett, to W. J. Knight, be stricken from the defendants' answer, and he be confined to their other allegations in their petition. For all orders and general relief.

M. J. CUNNINGHAM, JR.,
MURFF & WEBB,
Atty's Plaintiffs.

Indorsed: William H. Knight, *et al.*, *vs.* Lutcher & Moore Lbr. Co. *et al.* Motion to strike out & plea of estoppel & *res adjudicata* Filed Oct. 22nd, 1903. W. Jackson, Clerk.

In the Circuit Court of the United States, for the Western District of Louisiana, at Shreveport.

WILLIAM J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

In the above entitled cause, now comes the defendant and for the purpose of filing their amended answer with leave of the Court, first had and obtained respectfully show:

That said act of sale from Knight & Lovett, to W. J. Knight, included all the property belonging to Knight & Lovett, at said time, both movable and immovable, and the agreement was that W. J. Knight should act as the agent or manager of the business and property of Knight & Lovett, and was to receive for his service a salary; that said W. J. Knight agreed to convert said movable property into money and turn over the proceeds to Knight & Lovett, and further agreed at said time to recover to Knight & Lovett, the lands
14 sued for herein whenever said Knight & Lovett should desire him to do so, as aforesaid. That in pursuance of said agree-

ment and in compliance with the terms thereof, said W. J. Knight did convert said movable property into money and delivered to Knight & Lovett, the proceeds thereof; and that said W. J. Knight during all of said time recognized said Knight and Lovett as the owners of all of said property, and never at any time repudiated said agreement; that in the early part of 1887, said W. J. Knight offered to reconvey said lands to Knight & Lovett, and on Fe-ruary 5, 1887, he did convey to Viola P. Knight, the wife of Dan R. Knight, said Dan R. Knight's one-half interest in said lands, the act of sale being authorized by said Dan R. Knight. That at said time, J. A. Lovett did not want his half interest conveyed to him, but wanted to sell the same and did sell it at said time to W. J. Knight, they each taking one-half of his one-half and paying said J. A. Lovett therefor about the sum of one dollar per acre. That in pursuance of said sale, W. J. Knight, on the 7th day of February, 1887, conveyed a one-fourth interest in all of said lands to J. C. Knight, and kept title to a one-fourth interest for himself and that this was the first time said W. J. Knight ever acquired the real title to or any real interest in said lands. That the $500.00 recited in said act of sale of July 28, 1882, to have been paid by W. J. Knight, to Knight & Lovett, was in fact the money of Knight & Lovett; that the note of $14500.00, also recited in said act of sale was executed by W. J. Knight and delivered to Knight & Lovett, but the same was never paid by W. J. Knight, to Knight & Lovett, or to anyone else, and it was never the intention of the parties that it should be paid, but the said note was afterwards re-delivered to W. J. Knight without his ever having paid any part of it, and, therefore your defendants plead and say that the recital in said deed from Knight & Lovett, to W. J. Knight, aforesaid, that the purchase price of fifteen thousand dollars was paid in cash was error and untrue in fact, as no part of said purchase price was then paid or ever afterwards paid by the said W. J. Knight, or by any one acting for him, and in fact and in truth such sale to him was and constituted only a paper title to him of said property and same never in fact nor in law became the property of the community between him and his said so-called wife, and no interests whatever in said property vested in said community, and the said plaintiffs herein are without right or equity to any right, title or interest in said lands.

Your defendants further plead in bar of plaintiffs' right to recover the prescription of one, two, four, five and ten years.

15 Wherefore, defendants pray that plaintiffs' demands be rejected at their cost, but in the event of their eviction for judgment against their warrantors as prayed for in their answer herein and for all orders and decrees, for cost and general relief.

MASON WILLIAMS,
HOLLAND & HOLLAND,
ALEXANDER & WILKINSON,
Attorneys.

Indorsed: No. 276. Wm. J. Knight, *et al.*, *vs.* Lutcher & Moore. Amended Answer. Filed Oct. 27th, 1903. W. Jackson, Clerk.

In the Circuit Court of U. S., Western District of Louisiana.

No. 276.

WILLIAM H. KNIGHT ET AL.
vs.
H. J. LUTCHER ET AL.

Now comes the plaintiff, William H. Knight, *et al.*, by counsel and shows to the Court that by virtue of a decision of the United States Court of Appeals, Fifth Circuit Louisiana, rendered on April 4th, 1905, in the above styled cause, it was held by said Court of Appeals that the Circuit Court of the United States, Western District of Louisiana, had no jurisdiction of said cause under the pleading. That in accordance with said decision by said Court, a mandate has issued therefrom directed to the Honorable Circuit Court of the United States, holding — and for the Western District of Louisiana, ordering and commanding it to proceed according to law, and in accordance with the opinion expressed in the decree, all of which may be seen by the certified copy of the opinion of the Honorable Court of Appeals in and for the Fifth Circuit, together with a mandate from said Court, directed to this Honorable Court, which opinion and mandate is on file in your Honor's Court, and, which is attached hereto and made a part hereof.

He shows that under said decree and mandate, this case should be remanded to the State Court, to be proceeded with according to law.

Hence, plaintiff prays that an order issue from your Honor, ordering the clerk of your Honorable Court to remand said
16 cause to the State Court, of Louisiana, holding in and for Vernon Parish, and to issue a mandate to said Court in accordance with the order of the United States Court of Appeals.

He prays for all orders and general relief.

A. J. MURFF &
M. J. CUNNINGHAM, JR.,
Att'ys for Plaintiff.

Indorsed: No. 276. William H. Knight, *et al.*, *vs.* Lutcher & Moore Lumber Co. Motion to have case remanded to State Court. Filed Nov. 28th, 1905. W. Jackson, Clerk.

In the United States Circuit Court, Western District of Louisiana.

No. 276.

WM. J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

In the above matter, now comes the defendants and shows unto the Court, that an informal order or entry was made on the minutes

in this cause on this morning remanding this cause to the State Court. That such order or entry, was made in the absence of this counsel from the Court room, and without their knowledge or any notice to them of the intention to apply therefor. That defendants notified the counsel representing plaintiffs, that they would apply for leave to amend their petition for removal in this Honorable Court as soon as the decree from the Circuit Court of Appeals was returned to this Court. That said decree was received by counsel for plaintiff-, and only filed in this Court on this morning and immediately, without any notice to defendants or their attorneys, such entry or order to remand was procured from this Court. That such order to remand was improperly granted and should be set aside, and your defendant-files herewith their motion to amend the petition for removal.

Wherefore, they pray that said entry, or order to remand to the State Court, be set aside, and that their petition to amend be allowed, and for cost and general relief.

ALEXANDER & WILKINSON,
Att'ys for Defendants.

17 J. D. Wilkinson being by me duly sworn, says that he is one of the attorneys for the defendants in the above case, and that the facts stated in the foregoing application are true.

J. D. WILKINSON.

Sworn to and subscribed before me on this 28th day of November, 1905.

D. T. LAND,
Notary Public.

Indorsed: No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lbr. Co. *et al.* Motion to set aside order to remand. Filed Nov. 28th, 1905. W. Jackson, Clerk.

In the Circuit Court of the United States for the Western District of Louisiana, at Shreveport.

In Law.

WILLIAM H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER COMPANY ET AL.

To Mr. M. J. Cunningham & Messrs. Murff & Webb, Attorneys for Plaintiffs:

Please take notice that we shall make a motion before the Judge of the Circuit Court of the United States, for the Western District of Louisiana, at Shreveport, on the 28th day of Nov., 1905, at 12 o'clock in the forenoon or as soon thereafter as counsel can be heard, that the defendants in this cause have leave to amend the petition to remove this cause from the District Court of Vernon Parish, Louisiana, filed

erein, on such terms as the said Court may direct; a copy of which notion with the amendment and affidavit in support thereof, which ill be presented to the Court at such hearing, are herewith served pon you.

HOLLAND & HOLLAND,
ALEXANDER & WILKINSON,
MASON WILLIAMS,
Counsel for Defendants.

Shreveport, Louisiana, — day of ——, 1905.

Services accepted this 28th day of Nov., 1905.

A. J. MURFF,
Counsel for Plaintiff.

8 In the Circuit Court of the United States for the Western District of Louisiana, at Shreveport.

No. 276. In Law.

WILLIAM H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER COMPANY ET AL.

Now comes the defendants and move the Court to allow them to mend the third paragraph of their petition to remove this cause rom the District Court of Vernon Parish to this Court.

The third paragraph of this petition now reads as follows: "That our petitioners, the Lutcher & Moore Lumber Company, was at the ime of the commencement of this suit, and still is a citizen of the State of Texas, and of no other State, residing in the City of Orange, n said State; and that your petitioner, Henry J. Lutcher, was, at the ime of the commencement of this suit, and still is a citizen of the State of Texas, and of no other State, residing in the City of Orange, n said State; and that neither of your petitioners are now, nor were hey ever, a citizen or resident of the State of Louisiana."

That your petitioners, the defendants herein, desire to amend said paragraph so that hereinafter it may read as follows: "That your petitioner, the Lutcher & Moore Lumber Company, was at the time of the commencement of this suit, and still is a corporation organized and existing under and by virtue of the laws of the State of Texas, and of no other State, residing and having its domicile in the City of Orange, in said State; that your petitioner, Henry J. Lutcher, was at the time of the commencement of this suit, and still is a citizen of the State of Texas, and of no other State, residing and having his domicile in the City of Orange, in said State; and that neither of your petitioners are now, nor were they ever citizens or residents of the State of Louisiana."

HOLLAND & HOLLAND,
ALEXANDER & WILKINSON,
MASON & WILLIAMS,
Counsel for Defendants.

STATE OF TEXAS,
County of Bexar:

Before me, the undersigned authority, on this day personally appeared Mason Williams, known to me, who, being by me duly sworn, on oath states:

19 That he is one of the counsel for defendants in the above styled cause, and that he has read the amendment as set out above in the petition to remove this cause from the State Court, and that he is personally acquainted with the facts stated therein, and that the facts set forth in said amendment are true.

MASON WILLIAMS.

Sworn to and subscribed before me this the 15 day of November, A. D. 1905.

[SEAL.] HENRY C. KING, JR.,
Notary Public, Bexar County, Texas.

(Indorsed:) No. 276. Wm. H. Knight, *et al., vs.* Lutcher & Moore Lbr. Co., *et al.* Motion for leave to amend petition for removal. Filed Nov. 28th, 1905. W. Jackson, Clerk. Filed Feb'y 21st, 1906. W. Jackson, Clerk.

In the Circuit Court of the United States for the Western District of Louisiana.

No. 276.

WILLIAM H. KNIGHT ET AL.
vs.
LUTCHER-MOORE LUMBER CO. ET AL.

Be it remembered, that in the above cause, the United — Circuit Court of Appeals, in and for the Fifth Circuit, holding in and for the State of Louisiana, at New Orleans, on April 4th, 1905, rendered an opinion in the above styled cause which was pending before it, on appeal from the Circuit Court *from* the Western District of La., holding at Shreveport, La., wherein it is decreed that the said Circuit Court of the United States, in and for the Western District of La., had no jurisdiction of said cause, but that same properly belonged in the State Court, and ordering said cause sent back to said Court with instructions to proceed according to law. That while said cause was on its way back to the State Court, and while pending in said Circuit Court of Western District La., awaiting orders from said Court to send said record back to State Court, counsel for defendant filed a document purporting to be an amendment to the petition of removal.

To which filing counsel for plaintiff objected, for the reason that the Circuit Court had no jurisdiction, except to remand same to State Court, as directed by Circuit Court of Appeals, and that

20 an amendment to the petition of removal could not be filed and allowed in Circuit Court.

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Which objection was overruled by the Court and the amendment allowed and the case reinstated in Circuit Court for the following reasons.

To which counsel for plaintiff- excepted and reserved this bill, which has been submitted to counsel for defendant- and which he asks the Court to sign, that it may be filed and made a part of the record in this case, which has been done.

ALECK BOARMAN, *Judge.*

I acknowledge notice of foregoing bill of exception.

J. D. WILKINSON,
Attorney for Defendant-.

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher-Moore Lumber Co., *et al.* On motion to amend bill of exception. Filed Feb'y 23rd, 1906. W. Jackson, Clerk.

United — Circuit Court, Western District La.

No. 276.

WILLIAM H. KNIGHT ET AL.
vs.
LUTCHER-MOORE LUMBER CO. ET AL.

Now comes the plaintiff in the above styled cause, and before going to trial and specially reserving all rights and exceptions heretofore filed, further excepts to the jurisdictions of this Court and makes a part hereof the judgment and mandate lately rendered in said cause by the United States Circuit Court of Appeals, on April 4th, 1905, at New Orleans, La., holding in and for said District.

Therefore they pray that the Court sustain this motion and remand the case to the State Court for further proceedings and in accordance with the opinion of the Circuit Court of Appeals.

M. J. CUNNINGHAM,
A. J. MURFF,
Att'ys — Plaintiff.

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lumber Co., *et al.* Exception to jurisdiction. Filed March 6th, 1906. W. Jackson, Clerk.

21 U. S. Circuit Court.

No. 276.

W. J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO. ET AL.

In the above case now comes the defendants and shows unto the Court that they cannot go to trial at this time, because one of their

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witnesses, Dr. Lovett, is absent from the State, who is a material and competent witness in their behalf. That they have used due diligence to secure the attendance of said witness, and have been unable to secure his presence at the trial. That when the case was fixed for trial the said Lovett was notified thereof and requested to be present at the trial, and promised to do so, as will appear by copies of letters and telegrams hereto annexed and made part hereof. That defendants did not have time to secure the depositions of said witness and did not have him summoned because he lived out of the State and beyond the process of this Court.

That if said Lovett was present he would swear that the sale from Knight & Lovett to W. J. Knight was made without any consideration being paid therefor; that the five hundred dollars mentioned in said act of sale was not the money of W. J. Knight, but was that of Knight & Lovett, who loaned it to him for the sole purpose of making said payment appear real; that the $14,500 note was never paid by W. J. Knight, nor was it intended to be paid by the parties to said sale; that the agreement was at the time of said sale that said W. J. Knight should hold said land as the agent or trustee of Knight & Lovett, and that whenever he made any sales thereof that the amount received from such sales should be paid to Knight & Lovett; that in pursuance thereof he conveyed to Viola P. Knight, wife of Dan R. Knight, a member of the firm of Knight & Lovett, a portion of said land receiving no consideration therefor from her, but the sale to her was in consummation of the original agreement between said firm and said W. J. Knight; that the other sales made by him were in pursuance of said original agreement and the proceeds thereof were paid to the members of said firm, according to their interest; that W. J. Knight finally concluded to keep a portion of said land after the death of his wife, or woman claimed as his wife, and then paid for it after the death of his so-called wife. The said Lovett would further testify that said sale to W. J. Knight was for the purpose of conferring on him the widest powers of agency for
22 the firm of Knight & Lovett, of which firm said Dr. Lovett was the junior member, and that it was not made for the consideration named in said act of sale.

Defendants further show that said evidence is material and said witness is competent, and without which they cannot go to trial. That this motion is not made for a delay but in order to secure substantial justice, as the testimony of said witness can be secured by the next term of Court.

Wherefore they pray that said cause be continued until the next term of Court, and for general relief.

GEO. E. HOLLAND,
MASON WILLIAMS,
J. D. WILKINSON,
Attorneys.

J. D. Wilkinson, Mason Williams and Geo. E. Holland, each being by me duly sworn, depose and say that all of the defendants in the above cause are absent from the State at this time, and that they

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are the attorneys for all of said defendants, and that all of the facts set forth and allegations made in the foregoing application are true and correct, to the best of their knowledge, understanding and belief.

Sworn to and subscribed before me this the 6th day of March, 1906.

GEO. E. HOLLAND.
MASON WILLIAMS
J. D. WILKINSON.

W. JACKSON,
Clerk U. S. Circuit Court.

J. H. Tucker & Co., P. O. Box 124.

DAYTON, TEXAS, *Nov.* 9, 1905.

Mr. Mason Williams, San Antonio.

DEAR SIR: I have been at the Fair at Dallas and found yours of 3rd inst. I will attend Court for you if you need me.

Respectfully yours,

J. H. LOVETT.

(Indorsed:) Filed March 6/06. W. Jackson, Clerk.
Filed March 6/6.

23 FEB. 26TH, 1906.

Dr. J. A. Lovett, Liberty, Texas.

DEAR SIR: The case of Knight *vs.* Lutcher and Moore is -et for Monday, March the 5th, in Shreveport. Will you please telegraph me on receipt of this letter that you will meet me there next Monday morning, March 5th. I will be at the Caddo Hotel. We will pay expenses and for your time, which I suppose will be about the same as before.

Wire my expense.

Yours truly, —— ——.

(Indorsed.) Filed March 6/06. W. Jackson, Clerk.

FEBRUARY 27, 1906.

Dr. J. A. Lovett, Liberty, Texas.

DEAR SIR: I *write* [wrote] you yesterday about the case of Knight *vs.* Lutcher & Moore being set for Monday, March 5th, at Shreveport, which is next Monday. I was expecting a wire from you to-day, but have not yet heard from you. Please wire me, upon receipt of this letter, at my expense, that you will meet me at the Caddo Hotel on Monday morning. I expect to leave here in a day or two myself, to go into that country, and would like to have your wire before I leave. Of course, I will pay your expenses and for your time. I suppose the amount will be about the same as it was before.

Thanking you in advance for answering this by wire, I beg to remain,

Yours truly, —— ——.

(Indorsed:) Filed Mch. 6/06. W. Jackson, Clerk.

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The Western Union Telegraph Company.

Received at ——. 12 collect.

LIBERTY, TEXAS, *Feb.* 28/06.

Mason Williams, S. A.:

I will meet you in Shreveport Monday morning, March 5th.

J. A. LOVETT.

(Indorsed:) Filed Mch. 6/06. W. Jackson, Clerk.

24 Shreveport, La.:

Yours date Lovet sined Williams undld not at Liberty, Texas.

Liberty, Tex., Mar. 5/06.

(Indorsed:) Filed March 6/06. W. Jackson, Clerk.

Western Union Telegraph Company.

106 Dars. cy. 11 Collect 733 P. M.

LIBERTY, TEXAS, *M'ch 5th*/06.

Geo. E. Holland, Care Caddo Hotel, Shreveport, La.

Learn that Dr. Lovett left here Saturday morning for Shreveport.

E. B. PICKETT, JR.

(Indorsed:) Filed M'ch 6/06. W. Jackson, Clerk.

(Indorsed:) No. 276. W. J. Knight, *et al., vs.* Lutcher & Moore Lbr. Co., *et al.* Motion for a continuance. Filed March 6th. W. Jackson, Clerk.

United — Circuit Court, Western District La.

No. 276.

W. H. KNIGHT ET AL.

vs.

LUTCHER-MOORE LUMBER CO. ET AL.

Be it remembered, that on March 6th, when the above styled cause was called for trial, the plaintiff filed a motion to dismiss the suit for the reason that this Court had no jurisdiction of the cause and made a part of said motion the judgment and mandate lately rendered in said cause of the United States Circuit Court of Appeals, on April 4th, 1905, at New Orleans, holding in and for said District, and prayed that said suit be dismissed, and that the case be remanded to the State Court, in accordance with the opinion of the Circuit Court of Appeals, which said motion and exception was overruled by the Court for the following reasons:

To which ruling of the Court counsel for plaintiff excepted and reserved this bill of exception, which, after having submitted the same to the opposing counsel, he asked the Court to sign, that it might be and become a part of the record in this case.

ALECK BOARMAN, *Judge.*

O. K.
J. D. WILKINSON.

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lbr. Co., *et al.* Plaintiff's bill of exceptions. Filed March 7th, 1906. W. Jackson, Clerk.

U. S. Circuit Court, West. Dist. of La.

No. 276.

WM. H. KNIGHT ET AL.
vs.
H. J. LUTCHER ET AL.

In the above matter now comes defendants and shows unto the Court that they have had taken the evidence of Dr. A. J. Lovett under commission, which has been duly returned to this Court. That a rule should issue to the said plaintiffs to show cause, if any they have, why said d*is*positions should not be received, read and used in evidence on the trial of said cause.

Wherefore they pray that a rule do issue to said plaintiffs, requiring them to show cause before the day of trial in said cause why the deposition of said J. A. Lovett should not be read, used and filed in evidence on the trial of said case and for general relief.

ALEXANDER & WILKINSON.

Let the rule issue as prayed for and according to law. This Oct. 18th, 1906.

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. Wm. H. Knight, *et al., vs.* H. H. Lutcher, *et al.* Motion and rule to show cause. Filed Oct. 18th, 1906. E. C. Jackson, Dy. Clerk.

26 In the U. S. Circuit Court in and for the Western District of Louisiana.

No. —

W. J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Now comes the plaintiff, by counsel, and in answer to defendant's rule to show cause why the depositions of J. A. Lovett should not be

received and used in evidence in the above styled cause, and offers the following objections to the introduction and use of said depositions.

1st. That one cannot be heard alleging his own turpitude.

2nd. Parole evidence cannot be introduced to prove title to real estate or to contradict or vary an authentic act; especially without allegations of fraud or error.

3rd. The plaintiff being estopped by the plea of *res adjudicata* cannot be heard to question the reality or simulation of the sale of July 28/1882.

4th. The testimony is not allowable under the pleadings of the plaintiff's petition for the reasons that the allegations do not justify the same.

Wherefore the plaintiff prays that the deposition be suppressed and not allowed to be introduced in evidence. He further prays for all orders and general relief.

M. J. CUNNINGHAM, Jr.
A. J. MURFF.

(Indorsed:) No. 276. In Circuit Court U. S. Wm. H. Knight, *et al., vs.* Lutcher & Moore Lumber Co., *et al.* Answer to rule to motion to suppress testimony of J. A. Lovett. Filed Oct. 23rd, 1906. W. Jackson, Clerk.

27 In the Circuit Court of the U. S., Holding in and for the Western District of Louisiana.

In Fifth Circuit for Western District of Louisiana, at Shreveport, Louisiana.

No. 276.

WILLIAM J. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Now comes the plaintiff, by counsel, and demurs to that portion of the defendant's answer that in any way attacks the sale from Knight & Lovett to W. J. Knight, of date July 28/1882, and moves and prays the Court to strike out that portion of defendants' answer for the following reasons:

1st. The defendants, claiming title from W. J. Knight and Viola P. Knight and J. C. Knight, both of whom bought from W. J. Knight after sale of *sale of* July 28/1882, are estopped from attacking the title of W. J. Knight, since they traced whatever title they have back to W. J. Knight, who received his title by virtue of the sale of July 28/1882, from Knight & Lovett.

2nd. That the question of the reality or simulation of said sale has already been passed upon in the suit of McIlhenny & Co. *vs.* D. R. Knight, *et al.* (which was Knight & Lovett), and W. J. Knight, intervenor, being No. 60, in the 12th District Court of the State of

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Louisiana, holding in and for the Parish of Vernon, wherein all these parties were made parties, and where said sale of date July 28/1882, was declared by the judgment in said suit to be a *bona fide* sale and not a simulation, which judgment is *re- adjudicata* to said sale.

3rd. The defendants not claiming to be creditors nor relying on any deed from D. R. Knight or J. A. Lovett, or Knight & Lovett, show no interest or right to attack the said sale as simulated otherwise.

Wherefore plaintiff prays that that portion of the defendants' answer which attacks the sale of July 28/1882, from Knight & Lovett to W. J. Knight, be stricken from the answer, for the reasons above set forth. He further prays that his plea of estoppel, which he specially pleads, and his plea of *res adjudicata* as to the simulation *rel non* of the sale of July 28/1882, which he specially pleads be sustained.

28 He prays for all orders and general relief.

M. J. CUNNINGHAM, Jr.
A. J. MURFF.

(Indorsed:) No. 276. In Circuit Court U. S., Western Dist. La. W. H. Knight, *et al., vs.* Lutcher & Moore Lumber Co., *et al.* Plea of Estoppel and *res adjudicata*. Filed Oct. 23rd, 1903. W. Jackson, Clerk.

U. S. Circuit and District Court for Western District of La.

No. & —.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO.

Evidence taken on the trial of the above numbered and entitled cause on trial before Hon. Aleck Boarman, Judge of said Court, and a jury of twelve good and lawful jurors, who were first duly sworn, trial commencing on Oct. 31st, 1906.

Appearances.

A. J. Murff, Jeo Cunningham & M. C. Elstner, attorneys for plaintiff; Alexander & Wilkinson, Davidson & Willams, and Holland & Holland, attorneys for defendant.

Evidence reported by R. B. Cook, stenographer, at request of both Plaintiff and Defendant.

Plaintiff's Evidence.

W. H. SMART, witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Smart, you live in Vernon Parish?
A. Yes, sir.

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Q. How long have you lived there?
A. Ever since the formation of the Parish.
Q. About how long?
A. Since 1870 or 1871.

Q. Do you know W. J. Knight?

29 A. Yes, sir; I have known him ever since he was a little kid.

Q. Mr. Smart, what official position did you hold in Vernon Parish from 1875 to 1880?
A. Clerk of the District Court.
Q. Do you remember the occasion of W. J. Smart [Knight] applying to you for license to get married?
A. Yes, sir; I do.
Q. You remember the circumstance of issuing that license?
A. Yes, sir.
Q. To whom were the license issued for him to marry?
A. Miss Mary Cain.
Q. You issued the license to him?
A. Yes, sir.
Q. In those days were licenses returned to the Clerk's office?
A. No, sir; hardly ever. Once and a while they were.
Q. They kept no record of them in those days?
A. No, sir; no book was furnished until 1887 or 1888 or 1889.
Q. Now, what impresses you with the fact that you issued the license to Knight to marry Mary Cain?
A. Well, I loaned Knight my mare to steal the young lady. Her parents would not give her up, and he was a friend of mine and I liked him and his wife, and he came and asked me for the use of my mare, a saddle animal; said that he was going to steal Miss Mary, and I says all right, you can have her. He says I would like for you to send the license to Nathaniel S. Williams, Justice of the Peace of Ward Four.
Q. They lived in your neighborhood for a number of years?
A. Knight lived about twenty miles from us, but he previously lived five or six miles of us.
Q. He lived there in the same parish?
A. Yes, sir.
Q. Do you remember the names of the children?
A. Yes, sir; they had four children.
Q. Do you know the names of the children?
A. I think that I do; there was W. H. Knight, Florence, Johnny and Stella or Estelle.
Q. Have you been to their house at various times?
A. Yes, sir.
Q. You saw the children there?
A. Yes, sir; stayed all night there about twice with them and eat dinner there several times.

30 Q. Then state whether or not these plaintiffs in this case here are the children of W. J. Knight and Mary Cain Knight?

A. Yes, sir; they were their children, they always claimed to be and they were there on the place.
Q. Was it ever questioned in that parish that you ever heard of?
A. No, sir.

On cross-examination he said:

Q. Mr. Smart, you know W. J. Knight quite well?
A. Yes, sir; have known him since he was a boy.
Q. What property did he have when you knew him?
A. When I first knew him he had nothing, but then after he become of age——

JOHN CONWAY, witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

Q. Did you know W. J. Knight?
A. Yes, sir.
Q. Where did you know him?
A. The first time I got acquainted with him was about a month before he married.
Q. Where?
A. He was married at Elmwood Post Office, now; did not have any Post Office there then.
Q. When was it that they were married?
A. I think that it was in 1875.
Q. Well, what have you to refresh your memory as to that?
A. I was married in 1871, my wife died in 1872, and I came back there and was there two or three years when he married.
Q. Were you present at his marriage?
A. Yes, sir.
Q. Who married them?
A. Nathaniel Williams, Justice of the Peace.
Q. Who did he marry?
A. Miss Mary Cain.
Q. You knew them both before that, before they married?
31 A. No, sir; I did not know her at the time.
Q. You knew them afterwards?
A. Yes, sir.
Q. Do you know Wm. H. Knight, his son?
A. Yes, sir; knew him when he was a child.
Q. And John A. Knight?
A. Yes, sir.
Q. Miss Stella Knight?
A. Yes, sir.
Q. Florence, wife of Duncan [Durham]?
A. Yes, sir.
Q. They were the children of W. J. Knight and Mary Cain Knight?
A. Yes, sir?
Q. Do you know when Mrs. Knight died?
A. I think that she died, I will not be positive, but I think she died

just before I was married the second time, in 1885. I think that she died the last of July or the first of August; between that and the middle of August.

Q. 1885?

A. Yes, sir.

Q. Do you remember that that was about the time that she died?

A. Yes, sir.

Q. Either July or August, 1885?

A. Yes, sir; in August I was living down there, worked at Allen, and they brought the news of her death, I was up at Robeline.

Q. Who witnesses, if you remember, the marriage certificate? The marriage ceremony?

A. Well, I witnessed it, and I think, I am not positive, I think a young lady by the name of Miss Trure.

Q. You remember witnessing it?

A. Yes, sir; I remember witnessing it myself, and she was the only one outside of Williams' family that was present.

Q. You were not sure whether she witnessed it or not?

A. No, sir.

Q. You remember that you witnessed it?

A. Yes, sir.

Q. You have known them ever since?

A. Yes, sir; they lived in about four or five miles of me for several years and afterwards I moved off in another neighborhood, and then I knew them from that time to 1886, then moved from there.

Q. Did you ever hear their marriage questioned down there at all?

32 A. No, sir; never knew anything about it being questioned until Mr. Cunningham wrote me, inquiring about it. Knew nothing about the suit.

On cross-examination he said:

Q. The W. J. Knight, who you spoke of, is the same W. J. Knight who was here in the Court room a while ago.

A. Yes, sir.

Q. Sitting over there a while ago?

A. Yes, sir.

Q. He is the father of these children?

A. Yes, sir.

Q. The same man that was here in the Court room a moment ago?

A. Yes, sir.

Q. He is outside there now?

A. Yes, sir.

W. H. CAIN, witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Cain, where do you live?

A. Vernon Parish, Louisiana.

Q. Do you know W. J. Knight?

A. Yes, sir.

Q. Did you know Miss Mary Cain?
A. Yes, sir.
Q. How was she related to you?
A. She was my sister.
Q. What do you know of the marriage of W. J. Knight and Miss Mary Cain, your sister?
A. Well, my understanding was that they were legally married, although I did not see it.
Q. He ran away with her?
A. Yes, sir.
Q. You have lived there in the neighborhood ever since, around about them?
A. Yes, sir.
Q. Have you ever heard their marriage question [questioned] until it was brought up in this suit?
A. No, sir; never did.
Q. When were they married?
33 A. They were married in 1875, July, as well as I remember.
Q. Now, do you remember when your sister died?
A. Yes, sir.
Q. When?
A. She died in 1885, about August 7th.
Q. Well, you know W. H. Knight?
A. Yes, sir.
Q. John A. Knight?
A. Yes, sir.
Q. Stella Knight?
A. Yes, sir.
Q. Mrs. Florence Knight, wife of Jim Durham?
A. Yes, sir.
Q. They are the plaintiffs in this suit?
A. Yes, sir.
Q. Were they the issued [issues] of the marriage of W. J. Knight and your sister, Mrs. Mary Cain?
A. Yes, sir.

No cross examination.

Counsel for plaintiff offered in evidence original deed from Knight & Lovett to W. J. Knight, dated July 28th, 1882, with leave to file certified copy thereof.

Filed in evidence and marked Exhibit "A."

Counsel for plaintiff offered in evidence deed from W. J. Knight to John C. Knight, dated February 7th, 1887, to an interest in this land.

Filed in evidence and marked Exhibit "B."

Counsel for plaintiff offered in evidence deed from W. J. Knight to Viola P. Knight, dated February 5th, 1887, deeding to Viola P. Knight a portion of this land.

Filed in evidence and marked Exhibit "C."

Counsel for plaintiff offered in evidence deed from Viola P., W. H.

and J. C. Knight, to the full interest in the land to Lutcher & Moore, dated April 13th, 1889.

Filed in evidence and marked Exhibit "D."

34 Counsel for plaintiff offered in evidence certified copy of the petition and judgment of emancipation of Stella Knight.

Objected to by counsel for defendant, for the reason that she does not sue as an emancipated minor. There is nothing in her petition showing that she is an emancipated minor, and on the further ground, it is something that has occurred after the institution of this suit.

Objection overruled by the Court.

To which ruling of the Court counsel for defendant excepts and reserves bill of exceptions.

Filed in evidence and marked Exhibit "E."

Counsel for plaintiff offered in evidence the petition, answer and judgment in the suit of McIlhaney and Company *vs.* Knight & Lovett, W. J. Knight, Intervener.

Objected to by counsel for defendant, for the reason that they were no- parties to that suit, and on the further ground that the property involved in that suit is not involved in this suit, and it is therefore irrelevant in this case.

Objection overruled by the Court.

To which ruling of the Court counsel for defendant excepts, and reserves bill of exceptions.

Filed in evidence and marked Exhibit "F."

Counsel for plaintiff offered in evidence petition and answer and record, including judgment in the case of Albert S. Jamisson *vs.* Knight & Lovett, W. J. Knight, Intervener.

Objected to by counsel for defendant for the same reasons given to the former offering.

Objection overruled by the Court.

To which ruling of the Court counsel for defendant excepts and reserves bill of exceptions.

Filed in evidence and marked Exhibit "G."

Plaintiffs rest.

35 *Defendant's Evidence.*

It is admitted that the interest of G. B. Del Moore in this property involved in this case was transferred to the Lutcher & Moore Lumber Company; that is, leaving the ownership in Lutcher and the Lutcher & Moore Lumber Company.

Counsel for defendant offered in evidence the testimony of Dr. J. A. Lovett, taken under commission before J. F. Dabney, Liberty County, Texas.

Objected to by counsel for plaintiff, for the reason that parole testimony cannot be introduced to change, vary or to prove title to real estate.

We object for the further reason that whatever title the defendants claim in this case is derived from W. J. Knight, and he is estopped from attacking the title of W. J. Knight.

We object for the further reason that they are not shown to be creditors of Knight & Lovett, and therefore have no interest in contesting the deed from Knight & Lovett to W. J. Knight.

We further object for the reason and on the ground of the plea of *res adjudicata*, which we have already filed in this case, and on the further ground that there are no allegations in the defendant's answer of fraud or error in any manner, shape or form.

Objection sustained by the Court.

To which ruling of the Court counsel for defendant excepts and reserves bill of exceptions.

Court thereupon adjourned until to-morrow morning at ten o'clock.

November 1st, 1906, Court met pursuant to adjournment and trial of above cause was resumed.

Without abandoning the exception made to the ruling of the Court, counsel for defendant offers the testimony of Dr. J. A. Lovett, for the purpose of showing only that the purchase price of this land was the fourteen thousand five hundred dollars note was paid by W. J. Knight, after the death of his wife, by the sale of this identical land.

Offers so much of the testimony as tends in this depositions to affect that subject matter.

Objected to by counsel for plaintiff for the reason that under the allegations of the defendants answer, they have not set up
36 any settlement of the community between W. J. Knight and Mary Cain Knight, and they should not be allowed to introduce this testimony until a fair settlement of the comm*i*nit*u* [community] existing between them has been adjusted, and these parties have no right to call for that adjustment in this collateral manner.

Objected to for the further reason that if the note has been paid, the receipted note is the best evidence of its payment.

Counsel for defendants offers amended answer.

Objected to by counsel for plaintiff, for the reason that *is* it is in the nature of want of tender and it comes too late. And for -he further reason it is inconsistent with the original pleadings and changes the issues, and is not allowable after the case has been opened and trial begun.

Objection sustained by the Court.

To which ruling of the Court counsel for defendant excepts and reserves bill of exceptions.

Counsel for defendant offers the testimony of Dr. J. A. Lovett, for the purpose of showing that the sale of this property from W. J. Knight to Viola P. Knight and J. C. Knight, and later to Lutcher & Moore, was made for the purpose of paying the fourteen thousand five hundred dollar note mentioned in the sale of July 28th, 1882, and that the whole proceeds of the sale of the property paid in that sale went to pay that note.

Objected to by counsel for plaintiff, for the reasons already given.

Objection sustained by the Court.

To which ruling of the Court counsel for defendant excepts and reserves bill of exceptions.

Now counsel for defendants offer in this connection T. J. Word, a witness, who will likewise testify that the proceeds of the sale of this property went to pay this fourteen thousand five hundred dollar note.

Same objection by counsel for plaintiff.

Objection sustained by the Court.

To which ruling of the Court counsel for defendant excepts and reserves bill of exceptions.

Counsel for defendant also offers the witness James Cavanaugh for the same purpose.

Same objection by counsel for plaintiff.

Objection sustained by the Court.

37 To which ruling of the Court counsel for defendant excepts and reserves bill of exceptions.

T. G. B. Cox, witness for defendant, being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Cox, you are the land man for the Lutcher Moore Lumber Company?

A. Yes, sir.

Q. How long have you been connected with them?

A. Since 1901; January, 1901.

Q. Are you acquainted with the land that is involved in this suit?

A. Yes, sir.

Q. Do you know its market value?

A. Yes, sir; I think so.

Q. Will you state whether or not the market value of that land is in excess of five thousand dollars?

A. Yes, sir; it is.

Q. Is it valued at more than five thousand dollars or less?

A. It is worth more than that.

Q. How much taxes have the Lutcher & Moore paid on this land since they got it in 1889?

A. I am not able to say; could not say how much.

Q. Who has paid taxes on it?

A. Lutcher & Moore.

Q. Have you the tax receipts?

A. I have them at the hotel.

Objected to, as the receipts are the best evidence.

Counsel for defendant offers receipts, with leave to submit them as soon as the witness can go and get them.

To be filed in evidence and marked exhibit —.

Q. You have the tax receipts?

A. Yes, sir; up to 1901, and I have them since 1901, but since then I did not bring them along with me, but we have them *along with me, but we have them* on file in our office.

Q. Do you know how much the taxes have been per annum on this particular land?

BLURRED PA

A. No, sir; I do not know exactly how much it has been;
38 all the land has been assessed together, the whole bulk of their land in Vernon Parish are assessed at so many acres at a certain amount. I do not know what the rate of taxation is. Could not say what was the amount of taxes on this particular piece.

Evidence closed.

I hereby certify that the above and foregoing is a true and correct translation of my stenographic notes taken on the trial of the above numbered and entitled cause.

R. B. COOK,
Stenographer.

Fees of stenographer for taking evidence and making two carbon copies of same..... $11.70

[On margin in red ink:] Attached to defendant's Bill of Exceptions No. 3.

THE STATE OF LOUISIANA,
Parish of Vernon:

Know all men by these presents:

That this deed for the conveyance, sale and transfer of property, entered into on this 28th day of July, 1882, between Daniel Knight and John A. Lovett, on the one part, and William J. Knight, of the other part, all of Vernon Parish, Louisiana, witnesseth:

That for and in consideration of the sum and price as hereinafter expressed, the said Daniel Knight and John A. Lovett, who are trading and doing business under the name, firm and style of Knight & Lovett, have, and do hereby sell, transfer, alienate and deliver over to said William J. Knight, his heirs and assigns, forever, free from all debts, troubles, mortgages or other encumbrances whatsoever, the following described property, to-wit: Lands, The S. W. ¼ of S. E. ¼ and S. E. ¼ of S. W. ¼, Sec. 5, T. 2 S., Range 11 W.; the N. ½ of N. E. ¼ of Sec. 32 and S. E. ¼ and S. ½ of N. E. ¼, Sec. 33, T. 1 S., R. 11 W., and S. W. ¼ of N. E. ¼ and S. E. ¼ of N. W. ¼ and N. E. ¼ of S. W. ¼ and N. W. ¼ and N. ½ of N. E. ¼, Sec. 5, T. 2 S., R. 11 West, and N. E. ¼ of N. E. ¼, Sec. 20, and N. W. ¼ of N. W. ¼, Sec. 21, T. 2 S., R. 11 W.,
39 and N. ½ of N. E. ¼ and N. E. ¼ of N. W. ¼, Sec. 21, and N. W. ¼ of N. W. ¼, Sec. 22, T. 2 S., R. 11 West, and N. E. ¼ of N. E. ¼, Sec. 20, and N. W. ¼ of N. W. ¼, Sec. 21, T. 2 S., R. 11 W., and Fractional N. W. ¼ of Fraction N. E. ¼ of Sec. 6, T. 2 S., R. 11 W., and S. ½ of N. E. ¼, Sec. 6, T. 2 S., R. 11 W., and N. W. ¼ of N. E. ¼, Sec. 34, T. 2 S., R. 11 W., and E. ½ of N. W. ¼, Sec. 20, T. 2 S., R. 11 W., and S. ½ of N. E. ¼ and S. E. ¼ of N. W. ¼ of Sec. 23, and S. W. ¼ of N. W. ¼ of Sec. 24, T. 2 S., R. 11 W., and N. E. ¼ of N. E. ¼, Sec. 6, T. 2 S., R. 11 W., and W. ½ of S. W. ¼ of Sec. 17, N. E. ¼ of S. E. ¼, Sec. 18, T. 2 S., R. 11 W., and W. ½ and N. E. ¼ of S. W. ¼ and N. W. ¼ of S. E. ¼, Sec. 23, T. 2 S., R. 11 W., and 320 acres in

Secs. 33, 28 and 29, T. 1 S., R. 11 W., being the same acquired by us from Solomon Caps and Daniel Hale, and the same on which the mill, gin, &c., is situated, in all herein conveyed two thousand one hundred and sixty-two acres, more or less, all in Vernon Parish, La. Also our store-house and stock of goods, and our accounts, books, &c., and all logs in the Sabine River, or any of its tributaries, or on land, both cypress and pine, in our brand. And all the contents of our store house, iron safe, &c. And mules and one wagon and two horses; and all other logs owned by us in any other brand.

The consideration which said William J. Knight pays for said property is the sum and price of fifteen thousand dollars, of which amount five hundred dollars in cash and in hand paid, the receipt whereof is hereby acknowledged, and the balance of fourteen thousand and five hundred dollars to be due and payable on 1st November, 1882, for which amount the said W. J. Knight has this day executed his note in favor of said vendors, or bearer, drawing eight per cent. per annum interest from maturity till paid.

In testimony of all of which this act is signed in the presence of the two undersigned good and lawful witnesses, who, as witnesses with said parties, sign these presents, on this day and year first herein written.

J. A. LOVETT.
D. R. KNIGHT.
W. J. KNIGHT.

Witnesses:
J. H. MARTIN.
W. H. CRAFT.

40 OFFICE CLERK DIST. COURT, &., &c.

THE STATE OF LOUISIANA,
Parish of Vernon:

Personally came and appeared before me, the undersigned authority, W. H. Craft and J. G. Martin, witnesses to the foregoing sale and transfer of property, entered into on the 28th day of July, 1882, who, being by me duly sworn, declared and said that the above and foregoing deed was duly signed in their presence by the said J. A. Lovet and Daniel E. Knight of one part, and William J. Knight of the other part, on day and date therein written, and for uses and purposes therein expressed.

W. H. CRAFT.
J. H. MARTIN.

Sworn to and subscribed before me, this 29th day of July, 1882.

[SEAL.] WM. H. SMART,
Clerk. Dist. Court, &c., &c.

Filed for record July 29th, 1882, and recorded Aug. 7th, 1882, in book D, folios 17 and 18 of said book.

[SEAL.] W. H. SMART,
Clk. Court, &c., &c.

STATE OF LOUISIANA,
Parish of Vernon:

I, W. A. Moore, Dy. Clerk of 12th District Court and *Ex-Officio* Recorder in and for Vernon Parish, Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original filed and recorded in this office, recorded in conveyance book "D," pages 17 and 18.

Witness my official signature and seal of office, this the 23rd day of February, A. D. 1904.

[SEAL.]

W. A. MOORE,
Dy. Clerk and ex-Officio Recorder.

Indorsed: No. 276. Wm. J. Knight, *et al., vs.* Lutcher & Moore Lumber Co. Filed in evidence by Pltff. Feb'y 24/04. W. Jackson, Clerk.

Indorsed: Filed in evidence "A" Oct. 31st, 1906, in suit No. 276. W. Jackson, Clerk.

41 STATE OF LOUISIANA,
Parish of Natchitoches:

Before me, Isaac F. Carter, a notary public in and for the Parish and State aforesaid, duly commissioned and qualified, personally came and appeared William J. Knight, a resident of Vernon Parish, Louisiana, who *declare* [declares], in the presence of me, said notary, and the undersigned subscribing witness, to be hereinafter named, that for the consideration, price and sum of six hundred (600) dollars, cash in hand paid, the receipt of which is hereby acknowledged, he has this day, and does by these presents grant, bargain, sell, transfer, assign, set over, convey and deliver, with full and lawful warranty, unto John C. Knight, also of said residence here present, purchasing and accepting for himself, his heirs and assigns, one fourth interest undivided, the following described property, including the buildings, fixtures and improvements thereon, to-wit:

The S. W. ¼ of S. E. ¼ and the S. E. ¼ of S. W. ¼ of Sec. 5, and the N. ½ of N. E. ¼ of Sec. 32, and the S. E. ¼ and S. ½ of N. E. ¼ of Sec. 33, in T. 1 South, R. 11 West, and S. W. ¼ of N. E. ¼ and S. E. ¼ of N. W. ¼ and the N. E. ¼ of S. W. ¼ and N. W. ¼ of S. E. ¼ and the N. ½ of N. E. ¼ in Sec. 5, T. 2 S., R. 11 W., and the N. E. ¼ of N. E. ¼ of Sec. 20, and N. W. ¼ of N. W. ¼ and N. ½ of N. E. ¼ and N. E. ¼ of N. W. ¼ and N. W. ¼ of N. W. ¼ of Sec. 21, and N. W. ¼ of N. W. ¼ of Sec. 22, and N. E. ¼ of N. E. ¼ of Sec. 20, and Fractional N. W. ¼ of Fractional N. E. ¼ of Sec. 6, and the S. ½ of N. E. ¼ of Sec. 6, and N. W. ¼ of N. E. ¼ of Sec. 34, and E. ½ of N. W. ¼, Sec. 20, and S. ½ of N. E. ¼ and S. E. ¼ of N. W. ¼ of Sec. 23, and S. W. ¼ of N. W. ¼ of Sec. 24, and the N. E. ¼ of N. E. ¼ of Sec. 6, and W. ½ of S. W. ¼ of Sec. 17, and N. E. ¼ of N. E. ¼ of Sec. 18, and W. ½ of and N. E. ¼ of S. W. ¼, and N. W. ¼ of N. E. ¼ of Sec. 23, all in Township 2 S., Range 11 W., and 320 acres of land in Secs. 33, 28 and 29, in T. 1 S., R. 11 W., in all an undivided one-fourth

interest, of which is therein conveyed two thousand, one hundred and sixty-two acres, and a like one-fourth interest in the S. W. ¼ of Sec. 33, T. 1 S. R. 11 W. containing 160 acres of land, all lying and being situated in the parish of Vernon, State of Louisiana.

To have and to hold, said undivided one-fourth interest in
42 and to said tract of land and improvements thereon with the said purchaser his heirs and assigns forever. The vendor hereby binding himself, his heirs and assigns forever to warrant & defend the parcel of land herein conveyed against the legal claims & demands of all persons whatsoever.

The certificate of mortgages required by law is dispensed with *if* [by] consent and waived by the purchaser.

The words "one-fourth interest undivided" on line 22 of page interlined, read and considered before signing.

Thus done, passed and signed at my office in Robeline, in the presence of D. R. Knight, Jr. and T. S. Knight, good lawful & competent witnesses who subscribe their names hereto with the parties, and me, said notary, on this the 7th day of February, A. D. 1887.

W. J. KNIGHT.
JOHN C. KNIGHT.

Attest:
D. R. KNIGHT,
T. S. KNIGHT.

ISAAC F. CARTER,
[SEAL.] *Not. Pub.*

Filed for record and recorded April 7, A. D. 1887, in book of conveyances marked D, pages 285 and 286.

W. A. WINFREE,
[SEAL.] *Deputy Clerk Court, &c., &c.*

Indorsed: No. 276. W. J. Knight, Deed, John C. Knight. Filed in evidence by Def't Feb'y 25/04. W. Jackson, Clerk.

2nd Indorsement. Filed in evidence "B" Oct. 31st, 1906, in suit No. 276. W. Jackson, Clerk.

THE STATE OF LOUISIANA,
Parish of Natchitoches:

Before me, Isaac F. Carter, a notary public in and for the Parish and State aforesaid, duly commissioned and qualified, personally came and appeared William J. Knight, a resident of Vernon Parish, Louisiana, to me well known, who declared in the presence of me, said notary, and the undersigned subscribing witness to be hereinafter named, that for the consideration, price and sum of
43 twelve hundred dollars, cash in hand paid, the receipt of which is hereby acknowledged, he has this day and does by these presents grant, bargain, sell, transfer, assign, set over, convey and deliver, with full and lawful warranty, unto Mrs. Viola P. Knight, wife of Daniel R. Knight, resident of the Parish of Natchitoches, and duly separate in property from her said husband, here present, purchasing and accepting for herself, her heirs and assigns, with the aid, authorization and assistance of her said husband, who appears for that purpose, an undivided one-half interest in the fol-

lowing described property, including the buildings, fixtures and improvements thereon, to-wit:

The South West quarter of the South East quarter and the South East quarter of South West quarter of Section Five, Township No. 2 S., Range Eleven West. The North half of the North East quarter of Section Thirty-two, and the South East quarter and South half of North East quarter of Section Thirty-three, Township One South, Range Eleven West, and the South West quarter of North East quarter, and South East quarter of North West quarter, and the North East quarter of South West quarter, and the North West quarter of South East quarter, and the North half of North East quarter, Section Five, Township Two, South of Range Eleven West, and the North East quarter of North East quarter, Section Twenty, and N. W. ¼ of N. W. ¼, Sec. 21, T. 2 S., R. 11 W., and N. ½ of N. E. ¼ and N. E. ¼ of N. W. ¼, Sec. 21, and N. W. ¼ of N. W. ¼, Sec. 22, T. 2 S., R. 11 W., and N. E. ¼ of N. E. ¼ Sec. 20, and N. W. ¼ of N. W. ¼ Sec. 21, T. 2 S., R. 11 W., and fractional North West ¼ of fractional N. E. ¼ of Sec. 6, T. 2 S., R. 11 West, and the S. ½ of N. E. ¼, Sec. 6, S. [T.] 2 S., R. 11 W., and N. W. ¼ of N. E. ¼ Sec 34, and E. ½ of N. W. ¼ Sec. 20, and S. ½ of N. E. ¼ and S. E. ¼ of N. W. ¼ of Sec. 23, and South West quarter of N. W. ¼ of Sec. 24, and N. E. ¼ of N. E. ¼ of Sec. 6 and W. ½ of S. W. ¼ of Sec. 17 and N. E. ¼ of S. E. ¼ of Sec. 18, and W. ½ and N. E. ¼ of S. W. ¼ and N. W. ¼ of S. E. ¼ of Sec 23, all in T. 2 S., Range 11 West; and 320 acres of land in Sec. 33, 28 and 29, in T. 1 S., R. 11 West, in all, herein conveyed, two thousand one hundred and sixty-two acres; and the South West quarter of Sec. 33, T. One S., Range 11 West, containing one hundred and sixty-three acres of land, all lying and being situated in the Parish of Vernon, Louisiana.

To have and to hold said undivided half interest in said
44 tracts of land and improvements thereon unto the said purchaser, her heirs and assigns, for their own proper purposes and use forever.

The vendor hereby binding himself, his heirs and assigns forever, to warrant and defend said tracts of land against the legal claims and demands of all persons whatsoever.

The mortgage certificate required by law is waived by the purchaser.

Thus done, *person* [passed] and signed at my office in the town of Robeline, in the presence of D. R. Knight and W. H. Craft, good lawful and competent witnesses, who subscribe their names hereto with the parties and me notary, on this the 5th day of February, A. D. 1887.

W. J. KNIGHT,
VIOLA P. KNIGHT.

Attest:
W. H. CRAFT.
D. R. KNIGHT, Jr.

Authorized by me:
D. R. KNIGHT.

ISAAC F. CARTER,
Not. Pub.

Filed for record and recorded April 7, A. D. 1887, in book of conveyances marked D, pages 282 and 283.

W. A. WINFREE,
[SEAL.] *Deputy Clerk Court.*

Indorsed: Filed in evidence by Def't, Feb'y 25/04. W. Jackson, Clerk.

2nd Indorsement: Filed in evidence "C," Oct. 31/06, in suit No. 276. W. Jackson, Clerk.

STATE OF TEXAS,
County of Orange:

Know all men by these presents:

That we, Viola P. Knight, of Robeline, Natchitoches Parish, Louisiana, W. J. Knight and J. C. Knight, of Almadine, Vernon Parish, Louisiana, for the consideration hereinafter set forth, have bargained, sold and delivered, and do hereby bargain, convey
45 sell and deliver to the firm of Lutcher and Moore, composed of Henry J. Lutcher and G. Bedell Moore, of the town of Orange, of the State of Texas, their heirs and assigns forever, the following tracts *of* [or] parcels of land, situated in Vernon Parish, in the State of Louisiana, more particularly described as follows, that is to say:

The S. E. quarter of Sec. 33, in Township 1 S., Range 11 W., and the S. W. quarter of the N. E. quarter, and the S. E. quarter of the N. W. quarter, and the N. E. quarter of the S. W. quarter, and the N. W. quarter of the S. E. quarter of Sec. 5, Township 2 S., Range 11 W.

And the N. E. quarter of the N. E. quarter of Sec. 20, and the N. W. quarter of the N. W. quarter of Sec. 21, Township 2 S., Range 11 W.

And the W. half and the N. E. quarter of the S. W. quarter and the N. W. quarter of the S. E. quarter, Sec. 23, Township 2 S., Range 11 W.

And the E. half of the N. W. quarter, Sec. 20, Township 2 S., Range 11 W. And the N. W. quarter of the N. E. quarter, Sec. 34, Township 2 S., Range 11 W. And the W. half of the S. W. quarter of Sec. 17, and the N. E. quarter of the S. E. quarter Sec. 18, Township 2 S., Range 11 W.

And the S. half of the N. E. quarter and the S. E. quarter of the N. W. quarter of Sec. 23, and the S. W. quarter of the N. W. quarter of Sec. 24, Township 2 S., Range 11 W. And the N. half of the N. E. quarter and the N. E. quarter of the N. W. quarter, Sec. 21, and the N. W. quarter of the N. W. quarter of Sec. 22, Township 2 S., Range 11 W. And the N. E. quarter of the N. E. quarter of Sec. 22, and the N. W. quarter of the N. W. quarter of Sec. 23, Township 2 S., Range 11 W. And the S. half of the N. E. quarter, Sec. 13, Township 2 S., Range 11 W. And the S. W. quarter of the S. E. quarter and the S. E. quarter of S. W. quarter of Sec. 5, Township 2 S., Range 11 W.

And the S. W. quarter of Sec. 33, Township 1 S., Range 11 W.

And the S. half and the N. W. quarter and the W. half of the N. E. quarter of Sec. 16, Township 2 S., Range 11 W; aggregating in all two thousand and eighty-three (2083) acres, more or less.

The price or consideration for which said lands are sold is the sum of two thousand and eighty-three (2083) dollars in cash before the execution of these presents, the receipts of which is hereby acknowledged, and full acquittance given therefor.

To have and to hold the above described premises, together
46 with all and singular [the] rights and the appurtenances thereto in any wise belonging to the said Lutcher & Moore, their heirs and assigns forever. And we do hereby bind our heirs and executors and administrators to warrant and forever defend, all and singular, the said premises unto the said Lutcher & Moore, their heirs and assigns, forever, against every person whomsoever lawfully claiming or to claim same or any part thereof.

Witness our hands at Orange, Texas, this thirteenth day of April, A. D. 1889.

VIOLA P. KNIGHT,
Per DANIEL R. KNIGHT.
W. J. KNIGHT.
J. C. KNIGHT.

Signed and delivered in the presence of:

E. W. ZIMMERMANS.
J. M. CROWE.

STATE OF TEXAS,
County of Orange:

Before me, the undersigned authority, personally came Daniel R. Knight, attorney in fact for Viola P. Knight; also appeared W. J. Knight and J. C. Knight, vendors in the above conveyance, to me well known, and acknowledged that they executed the same of their own free will and accord, for the objects and purposes therein expressed, and in my presence subscribe their names thereto.

Witness my hand and seal, this 13th day of April, A. D. 1889.

[SEAL.] H. W. SELLS,
J. P., Pract. ot. and ex Officio N. P., Orange Co., Texas.

Filed for record and recorded April 24th, 1889, in conveyance book D, folios 440 and 441 of said book. Hugh L. Sanders, Clk. Dist. Court, &c.

Indorsed: Filed in evidence by Def't., Feb'y 25th, 1904. W. Jackson, Clerk.

2nd indorsement: Filed in evidence "D," Oct. 31/06, in suit No. 276. W. Jackson, Clerk.

47 *Petition.*

To the Hon. Judge of the 12th Judicial District, sitting in and for the Parish of Vernon and State of Louisiana:

The petition of Stella Knight, a resident of Vernon Parish, Louisiana, respectfully represents that she is a minor, over the age of eighteen years; that her mother died about seventeen years ago, and thereafter her father, W. J. Knight, was confirmed as dative tutor, he having married a second time, of petitioner in the proceedings of the tutorship of the minor heirs of Mary Knight, No. — of the docket of this Court.

That petitioner has her own way to make in the world, and it is desirable for her greater success that she should be fully emancipated, and that petitioner is fully capable of managing her own affairs.

That petitioner owns very little more than the undivided interest in her mother's estate, the value of which is hardly known.

That petitioner annexes hereto the written assent of her father, dative tutor, as required by law.

Wherefore, petitioner prays that this Court, after due examination of petitioner as required by law, render judgment herein decreeing petitioner to be fully emancipated and relieved of all the disabilities which now attach to minors, and with full power to do and perform all acts as fully as if she had arrived at the age of twenty-one years.

STELLA KNIGHT.

Assent of Father and Dative-Tutor.

I hereby fully assent to the complete emancipation of my daughter, Stella Knight, by decree of Court. She is fully capable of managing her own affairs.

Leesville, Vernon Parish, Louisiana, March 5, 1903.

W. J. KNIGHT.

Emancipation of Stella Knight.

No. —. 12th District Court in and for Vernon Parish, Louisiana.

Considering the petition and assent on file and having interrogated the petitioner, the Court being satisfied, the said petitioner is fully capable of administering her own affairs, it is ordered, adjudged and decreed that the petitioner, Stella Knight, be
48 fully emancipated and relieved of all the disabilities which attach to minors, with full power to do and perform all acts as fully as if she had attained the age of twenty-one years.

Judgment rendered and signed at Chambers, in Many, La., on this 9th day of March, 1903.

J. B. LEE,
Judge 12th Jud. Dist. of La.

Filed 11th day of M'ch, 1903.

J. J. HICKS,
Clerk District Court.

STATE OF LOUISIANA,
Parish of Vernon:

I, J. J. Hicks, Clerk of the 12th Judicial District Court in and for the Parish of Vernon, Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in this office, recorded in suit record No. 1, page 7, *et seq.*

Witness my official signature and seal of office, at Leesville, La., on this the 3rd day of March, A. D. 1904.

J. J. HICKS,
Clerk 12th Dist. Court.

[SEAL.]

Indorsed: Filed in evidence "E," Oct. 31/06, in suit No. 276. W. Jackson, Clerk.

In the 14th Judicial District Court of the State of Louisiana, in and for the Parish of Vernon.

To the Honorable Judge of said Court:

The petition of McIlhenny Company, a commercial firm, residing and doing a commercial business under said firm name and style, in the city of Houston, Harris County, State of Texas, composed of Samuel K. McIlhenny, William R. Baker, William D. Cleveland, William B. Botts, Frederick A. Rice and Benjamin A. Botts, all residents, also, of said city of Houston, Harris County, State of Texas, respectfully represents that Daniel R. Knight and John A. Lovett, residents of said Parish of Vernon, Louisiana, as formerly, if not now, composing the commercial partnership firm of Knight & Lovett, formerly, if not now, domiciled and doing a commercial partnership business under said firm name and style in said Parish
49 of Vernon, Louisiana, are indebted *in solido* to your petitioners in the sum of three hundred and eighty 73/100 dollars, with five per cent. per annum interest thereon from January 26, 1882, until paid, for goods, wares and merchandise purchased by said Knight & Lovett from your petitioners, November 26, 1881, and for cases or boxes therefor, and drayage and insurance thereon, as will be shown by a detailed account thereof to be duly established and to be introduced in evidence on the trial of this suit.

Your petitioners aver amicable and ineffectual demand of payment of said account.

Your petitioners aver that the said Daniel R. Knight and John A. Lovett recently, while composing said firm of Knight & Lovett, and while doing business as aforesaid under said firm name and style of Knight & Lovett, have disposed of a large part of their property in said Parish of Vernon, with intent to defraud their creditors, including your petitioners, and therefore your petitioners are legally entitled to obtain an attachment of the property rights and credits of said defendants, and such attachment is necessary to secure payment of your petitioners' said claim.

Wherefore, your petitioners pray that the said Daniel R. Knight and John A. Lovett may be cited to appear and answer hereto, for an order and writ of attachment and for an attachment thereunder

of the property, rights and credits of said Daniel R. Knight and John A. Lovett, as formerly, if not now, composing said firm of Knight & Lovett, to an amount sufficient to pay and satisfy your petitioners' said claim, with interest as aforesaid and all costs of this suit; that your petitioners may have judgment for and recover from said Daniel R. Knight and John A. Lovett, *in solido*, said sum of three hundred and eighty 73/100 dollars, with interest thereon as aforesaid, and all costs of this suit; that your petitioners' legal privilege on the property, rights and credits of said defendants which may be attached in this suit, and resulting from such attachment, may be recognized and may be enforced by a seizure and sale thereof to pay and satisfy said judgment; for all further orders and decrees necessary in the premises, and for general relief.

By their attorney at law: GEO. H. WELLS.

Before me, the undersigned Clerk of the 14th Judicial District Court of the State of Louisiana in and for Parish of Vernon,
50 personally appeared George H. Wells, Esquire, attorney at law, to me personally known, who, being duly sworn, deposes and says he is the attorney of McIlhenny Company, the petitioners in the above and foregoing petition; that all the facts and allegations contained in said petition are true to best of affiant's knowledge and belief, and that the attachment therein prayed for is necessary, for the reasons and purpose therein alleged.

GEO. H. WELLS,
Attorney for the Petitioners, McIlhenny Company.

Sworn to and subscribed before me at Leesville, Vernon Parish, Louisiana, August 16, 1882.

WM. H. SMART,
Clk. 14th Jud. Dist., Vernon Parish, La.

Let a writ of attachment issue and be executed as prayed for on the petitioners furnishing bond with surety as required by law.

Given officially at my office, at the court house at Leesville, Vernon Parish, Louisiana, August 16th, 1882.

Witness my official signature and seal.

WM. H. SMART,
Clk. Court.

In District Court, Vernon Parish, Louisiana.

No. 60.

McIlhenny Co.
vs.
D. R. Knight et al., W. J. Knight, *invor* [Intervener].

And now comes defendants and answering, without prejudice to their motion to dissolve attachment, acknowledge indebtedness as claimed by plaintiffs, and deny all other allegations of plaintiffs.

J. F. SMITH,
A. J. KEARNEY,
Attys.

Attest: A true copy of the original.

[SEAL] J. J. HICKS, *Clerk.*

51 In Dist. Court, Vernon Parish, Louisiana.

No. 60.

McILHENNY COMPANY
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

And now comes defendants, and before answering, moves this Honorable Court to dissolve and set aside the attachment in this cause, for the following reasons, to-wit:

1st. That the affidavit on which the attachment was issued is defective, illegal and insufficient, and not stating the debt sued on to be due.

2nd. That the affidavit and bond on which the attachment was issued is defective, illegal, void and insufficient, the said affidavit having been made and the said attachment bond executed by Geo. H. Wells, for plaintiffs, who was without special authority as the law requires to so make said affidavit and execute said bond for plaintiffs.

3rd. The affidavit on which said attachment was issued is defective, illegal and insufficient in not stating that plaintiffs were absent at the time from Vernon Parish, and in not stating that the amount claimed was positively due by defendants, and in not stating that the same was made on the affiants' own knowledge, and not from information derived from plaintiffs.

4th. That there was no legal order for the issuing of said attachment, and that what purports to be an order was made prematurely and long before the giving of any attachment bond.

5th. That the affidavit on which the attachment issued is insufficient, being made long previous to action on the petition, and long previous to the giving attachment bond, and long previous to issuing the writ of attachment, and plaintiffs, or one of them, could or might have been in Vernon Parish at the time of giving bond, and at the time of issuing writ of attachment, the facts as to which should have been made to appear by new affidavit.

Wherefore defendants pray that said attachment be dissolved and set aside at plaintiffs' coest, and for full and general re-
52 lief, &c.

J. F. SMITH &
A. J. KEARNEY,
Att'ys.

Filed 8th day of November, 1882.

W. H. SMART,
Clk. Dis. Court.

To the Hon. S. D. Read, Dist. Judge of 14th Judicial District of Louisiana, holding sessions of Court in and for Vernon Parish, in the District and State aforesaid:

The petition of intervention of William J. Knight, a resident of Vernon Parish, La., with respect represent to your Honor that in

suit No. 60 on docket and now pending before your Hon. Court in and for the Parish of Vernon, entitled, McIlhenny Company *vs.* Daniel R. Knight and John A. Lovett, a writ of attachment against the property of said defendants was issued, and that said plaintiff and C. F. Conerly, Sheriff of said Parish of Vernon, has, under and by virtue of said writ of attachment so issued in said cause, attached and taken into their possession ten (10) yoke oxen, three (3) log carts, one (1) log wagon, six (6) log chains and one (1) set of blacksmith tools, as seen by the return on the back of said writ of attachment, which return is referred to and made part hereof, valued at the sum of seven hundred and forty-eight dollars, and that he is the legal, just and *bona fide* owner of said property so attached under and by virtue of said writ, and now intervenes in said suit No. 60, claiming said property so attached to belong to him, as seen by act of sale and purchase from said defendants, duly recorded in Vernon Parish, Louisiana, and all of which will be duly shown on trial hereof.

Wherefore (*whereof*), the premises considered, petitioner prays for an order of your Hon. Court, permitting and allowing him to intervene in said suit and to bond said property, and for citation to McIlhenny Company, plaintiff, a resident of Houston, Harris County and State of Texas, and citation to defendants, Daniel R. Knight and John A. Lovett, residents of Vernon Parish, Louisiana, and after due trial had, that judgment be rendered by your Hon. Court decreeing him to be the legal, just and *bona fide* owner of said property so attached in said suit, and that the same be released from said
53 attachment and that he be put and maintained in the just and peaceful possession thereof.

Petitioner prays for judgment for costs, all other necessary orders and decrees, and for full and general relief, &c.

J. F. SMITH, *Att'y.*

THE STATE OF LOUISIANA,
Parish of Vernon:

I, William J. Knight, plaintiff in the foregoing petition of intervention, do solemnly swear that the facts and allegations as set forth and contained in the said petition are true and correct, and that the Hon. S. D. Read, Dist. Judge of the 14th Jud. District of Louisiana, is a non-resident of Vernon Parish and now absent from same. So help me God.

W. J. KNIGHT.

Sworn to and subscribed before me, 22nd day of Sept., 1882.

WM. H. SMART,
Cl'k Dist. Court.

BLURRED

In Dist. Court, Parish of Vernon, Louisiana.

No. 60.

McIlhenny Company
vs.
D. R. Knight et al.

Be it ordered that William J. Knight, plaintiff in the foregoing petition of intervention be and he is hereby permitted and allowed to intervene in the above entitled and numbered suit. And further that he be and is hereby allowed and permitted to bond and replevy the property attached in said suit by giving bond and security as required by law.

In the absence of the Hon. Dist. Judge, done and signed by me as clerk of the Dist. Court, in and for the Parish of Vernon, Louisiana, on this 22nd day of Sept., 1882.

WM. H. SMART,
Cl'k Dist. Court.

Filed Sept. 22, 1882.

W. H. SMART,
Cl'k Dist. Court.

54 *Citation.*

In Dist. Court, Vernon Parish, La.

No. 60.

McIlhenny Company
vs.
D. R. Knight et al., W. J. Knight, Intervener.

The State of Louisiana to Daniel R. Knight and John A. Lovett, residents of the Parish of Vernon, La., and defendants in above entitled suit, and to McIlhenny Company, residents of City of Houston, Harris County, Texas:

You are hereby cited to appear at the office of clerk, Dist. Court, held in court-house, town of Leesville, La., and comply with the demand contained in the petition of William J. Knight, intervener in suit No. 60, entitled McIlhenny Company *vs.* D. R. Knight, *et al.*, or file your answer thereto in writing in said office in ten days after service hereof with one additional day for every ten miles between your residence & said office.

Witness the Hon. S. D. Read, Judge of said Court, with my hand & seal as clerk, Dist. Court, on this 22nd Sept., 1882.

W. H. SMART,
Cl'k Dist. Court.

AGES

Received this citation together with a copy thereof and a copy of the accompanying petition, and order of intervention, Oct. 19, 1882, and on the 28th day of same mo. & year, I served the same by handing said copy of citation & copy of petition & order of intervention to Geo. H. Wells, Esq., Att'y at Law, in person in the town of Lake Charles, Calcasieu Parish, La.

JULIEN RICHARD, *D'y Sh'ff.*

Service $2.50.

55 In Dist. Court, Vernon Parish, Louisiana.

No. 60.

McIlhenny Company
vs.
Daniel R. Knight et al., W. J. Knight, Intervener.

The State of Louisiana to Daniel R. Knight and John A. Lovett, residents of the Parish of Vernon, La., composing the commercial partnership firm of Knight and Lovett, and defendants in the above entitled suit No. 60, and to McIlhenny Company, residents of Houston, Harris County, Texas, and plaintiffs in the above entitled suit:

You are hereby cited to appear at the office of the clerk of the Dist. Court, Vernon Parish, La., held at the court-house, town of Leesville, La., and comply with the demands contained in the petition of W. J. Knight, intervener in said suit, or file your answer thereto in writing in said — in ten days after the service hereof *after*, with one additional day for every ten miles distance between your residence and said office.

Witness the Hon. S. D. Reed, Judge of said Court, with my hand and seal officially on this 22nd Sept., 1882.

[SEAL.]

W. H. SMART,
Cl'k Dist. Court.

Received certified copies of within citation, petition, &c., &c., of intervention of W. J. Knight, in suit No. 60, entitled McIlhenny Company, *vs.* D. R. Knight, *et al.*, on the 23rd Oct., 1882, and served copy on Knight & Lovett, at their residence on 24th day, same month & year, and served copy on McIlhenny Company, by posting same on court-house door on the 9th day of Oct., 1882.

Distance travelled, 50 miles.
Sh'ff's cost, $11.00.

C. F. CONERLY, *Sh'ff.*

Attest:
A true copy of the original.
[SEAL.]

J. J. HICKS, *Clerk.*

56 In the District Court of Vernon Parish, Louisiana, 14th Judicial District, November Term, 1882.

No. 60.

McILHENNY COMPANY
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

The plaintiffs in the above numbered and entitled suit for answer to the petition of intervention filed therein by William J. Knight, the intervener in said suit, deny all and singular, the facts and allegations contained in said petition of intervention, except the allegation that they have attached, as the property of the defendants in said suit, the property claimed by said intervener.

Plaintiff- specially aver that said intervener's alleged title to said property is a pretended deed of sale to him from the defendants in said suit, and that said pretended deed and the pretended contract of sale evidenced by said deed, were and are a mere and fraudulent simulation and illegal null and void.

Wherefore, plaintiffs pray that said intervener's demand may be rejected and dismissed by a final and definite judgment, at said intervener's costs.

GEO. H. WELLS,
W. A. CARTER,
Att'ys for Plaintiffs.

Filed Nov. 11, 1882.

W. H. SMART,
Cl'k Court.

Attest:
A true copy of the original.
[SEAL.]

J. J. HICKS, *Clerk.*

In the 14th Judicial District Court of the State of Louisiana in and for the Parish of Vernon, November Term, 1883.

No. 60.

McILHENNY COMPANY
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

By reason of the law and the evidence in the above numbered and entitled suit being in favor of the plaintiff- and against
57 the defendants therein, as to plaintiffs' moneyed demand in said suit, a trial having been held upon the merits after issue joined by answer, and the defendants in their answer, having admitted plaintiffs' moneyed demand, and the Court considering the 4th ground of defendants' motion to dissolve the attachment in said suit well taken, to-wit, the ground that the order of attachment is

insufficient in terms, it is ordered, adjudged and decreed that the defendants' motion to dissolve said attachment be and the same is hereby sustained upon the 4th ground of said motion to dissolve the same, to-wit, upon the ground that the order of attachment is insufficient in terms, and that said attachment for that reason, be and the same is hereby dissolved, and that the attached property be released from said attachment, and that the costs of said attachment be paid by McIlhenny Company, plaintiff.

It is further ordered, adjudged and decreed that the plaintiff, McIlhenny Company, do have judgment for and recover from the defendants, Daniel R. Knight and John A. Lovett, *in solido*, the sum of three hundred and eighty 73/100 dollars ($380 73/100), with five per cent. per annum interest thereon from January 26, 1882, until paid, and all costs of said suit, except the costs of said attachment, and the costs of the intervention therein.

And by further reason of the law and the evidence in said suit being in favor of the intervener and against the plaintiff- therein as to the intervention *inside* suit, it is further ordered, adjudged and decreed that said intervener, William J. Knight, do have judgment against said plaintiff McIlhenny Company, recognizing and decreeing said intervener to be the rightful owner of the proprety attached in said suit, under and by virtue of said intervener's purchase thereof from said defendants, by the act of sale executed July 28, 1882, in evidence in said suit, which act of sale is hereby decreed to be a real sale and not a simulation, and that said intervener do have judgment for and recover from said plaintiff, McIlhenny Company, all costs of the intervention in said suit, including the sum of ten dollars to be taxed with the costs of said intervention for the fee allowed by law to W. A. Carter, Esq., plaintiffs' curator, *ad hoc*, in said suit in the matter of said intervention.

Done, read and signed in open Court, November 8, 1883.

STEPHEN D. READ,
Judge, 14th Judicial District of the State of Louisiana.

Filed Nov. 8, 1883.

58 Attest:

A true copy of the original.

[SEAL] J. J. HICKS, *Clerk.*

Indorsed: McIlhenny Co., *vs.* Dan R. Knight, *et al.*, W. J. Knight, Intervener. Filed Feb'y 16th, 1904. W. Jackson, Clerk.

2nd Indorsement: Filed in evidence "F," Oct. 31/06, in suit No. 276. W. Jackson, Clerk.

In the 14th Judicial District Court of the State of Louisiana in and for the Parish of Ver*mont* (Vernon).

To the Honorable Judge of said Court:

The petition of Elbert S. Jemison, of the City, County and State of New York, respectfully represents:

That Daniel R. Knight and John A. Lovett, residents of said Parish of Vernon, State of Louisiana, as formerly if not now composing

the commercial partnership firm of Knight & Lovett, formerly if not now domiciled and doing a commercial business in said Parish of Vernon, under said firm name and style of Knight & Lovett, are indebted, *in solido*, to your petitioner in the sum of eleven hundred and seventy-one 89/100 dollars ($1171 89/100), with eight per cent. per annum interest thereon from February 1, 1882, until paid, as will more fully appear by reference to a promissory note to be produced in evidence on the trial of this suit, made, executed and signed by said Knight & Lovett, and of which the following is in substance a copy:

Dolls. 1171 89/100.

ALMADANE, VERNON PARISH,
LOUISIANA, *February* 1, 1882.

Sixty days after date, we promise to pay to the order of C. M. Peane & Co., eleven hundred & seventy-one 89/100 dollars, at their office in Galveston, Texas, value received, with interest at 10 % per annum from date until paid.

(Signed) KNIGHT & LOVETT.

(Indorsed:) Pay to the order of E. S. Jemison. (Signed) C. M. Peane, & Co.

59 Your petitioner avers that he is the indorsed and legal owner and holder of said promissory note, and that amicable and ineffectual demand of payment thereof has been made.

Your petitioner avers that since the maturity of said note the said Daniel R. Knight and John A. Lovett, while composing said firm of Knight & Lovett, and while doing business as aforesaid under said firm name and style of Knight & Lovett, have disposed of a large part of their property, rights and credits in said Parish of Vernon with intent to defraud their creditors including your petitioner, and, therefore your petitioner is legally entitled to an attachment of the property, rights and credits of said defendants, and such attachment is necessary to secure payment of your petitioner's said claim.

Wherefore, your petitioner prays that the said Daniel R. Knight and John A. Lovett may be cited to appear and answer hereto, for an order and writ of attachment, and for an attachment thereunder of the property, rights and credits of said defendants as formerly if not now composing said firm of Knight & Lovett to an amount sufficient to pay and satisfy your petitioner's said claim with eight per cent. per annum interest thereon as aforesaid, and all costs of this suit, that your petitioner may have judgment for and recover from said Daniel R. Knight and John A. Lovett, *in solido*, said sum of eleven hundred and seventy-one 89/100 dollars, with eight per cent. per annum interest thereon from February 1, 1882, until paid, and all costs of this suit; that your petitioner's legal privilege on the property, rights and credits of said deefndants, which may be attached in this suit, and resulting from such attachment, may be recognized, and may be enforced by a seizure and sale of such attached property, rights and credits, to pay and satisfy said judg-

ment for all further orders and decrees necessary in the premises and for general relief.

By his attorney at law,

GEO. H. WELLS.

Affidavit.

14th Judicial District Court, Clerk's Office.

STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, the undersigned clerk of said Court, personally appeared George H. Wells, esquire, to me personally known as
60 an attorney at law, and a resident of Lake Charles, in said Parish of Calcasieu, Louisiana, who being duly sworn, deposes and says he is the attorney for Elbert S. Jemison, the petitioner in the above and foregoing petition; that all the facts and allegations contained in said petition are true to the best of affiant's knowledge and belief, and that the attachment therein prayed for is necessary far the reasons and purposes therein alleged.

GEO. H. WELLS,
Attorney for Elbert S. Jemison, the Petitioner.

Sworn to and subscribed before me at my office in the town of Lake Charles, Calcasieu Parish, Louisiana, August 19th, 1882.

Witness my official signature and seal.

[SEAL.] THAD S. CAYO,
Clerk, Dist. Court, Calcasieu Parish, La.

Order.

Let a writ of attachment issue as prayed for and be executed on the party furnishing bond and surety as required by law.

Given officially at my office at the court-house, August 22nd, 1882.

Witness my official signature & seal.

[SEAL.] W. H. SMART,
Clerk Court.

Bond.

District Court, 14th Judicial District.

No. —.

ELBERT S. JEMISON
vs.
DANIEL R. KNIGHT ET AL.

STATE OF LOUISIANA,
Parish of Vernon:

Know all men by these presents, That, we, Elbert S. Jemison, of the City, County and State of New York, plaintiff in the above

entitled suit, as principal, and John M. Liles and Augustus
61 F. Evans, as sureties, of said Parish of Vernon, Louisiana, as sureties, are held and firmly bound unto William H. Smart, clerk of said 14th Judicial District Court, of said State of Louisiana, in and for said Parish of Vernon, and to his successors in office, in the penal sum of twelve hundred and fifty dollars, for the payment of which, in lawful money of the United States of America, well and truly to be made, we hereby bind ourselves, *in solido*, and our heirs and legal representatives.

The condition of the above obligation is such, that, whereas, the above bounden principal, Elbert S. Jemison, plaintiff in said suit, has sued out and obtained in said suit an order of attachment for the attachment of the property, rights and credits of the defendants in said suit, to an amount sufficient to pay and satisfy the claim of said plaintiff in said suit for the sum of eleven hundred and seventy-one 89/100 dollars, with eight per cent. per annum interest thereon from February 1, 1882, until paid, and all costs of said suit.

Now, therefore, if the said Elbert S. Jemison, as principal, or the said John M. Liles and Augustus F. Evans, as his sureties, shall pay and satisfy whatever damages may be recovered against them or against either of them by the defendants in said suit, or by any other person who may be interested in the property, rights or credits, which may be attached in said suit, in case it should be decided that said attachment was wrongfully obtained, then the above obligation is to be null and void; otherwise to be and remain in full force and virtue.

Done, read and signed at Leesville, Vernon Parish, Louisiana, August 21st, 1882.

ELBERT S. JEMISON,
Per GEO. H. WELLS,
His Att'y at Law.
J. M. LILES.
AUGUSTUS F. EVANS.

Before me and approved.

W. H. SMART,
Cl'k Court.

Filed Aug. 22nd, 1882.

W. H. SMART,
Cl'k Court.

62 *Citation.*

State of Louisiana, Parish of Vernon, District Court, Clerk's Office.

No. —.

ELBERT S. JEMISON
vs.
D. R. KNIGHT ET AL.

The State of Louisiana to the Sheriff of Vernon Parish, or any of his lawful deputies, Greeting:

By virtue of an order of attachment rendered in the above numbered and entitled suit, you are hereby commanded in the name of

the State of Louisiana, and of said District Court, to attach and seize and take into your possession and to safely keep in your custody until the further order of said Court, the property, rights and credits in said Parish, of Daniel Knight and John A. Lovett, the defendants in said suit as formerly, if not now composing the commercial partnership firm of Knight and Lovett, to an amount sufficient to pay and satisfy the demands of Elbert S. Jemison, the plaintiff in said suit for the sum of ($1171 87/100) eleven hundred and seventy-one & 87/100 dollars, with 8% per annum interest thereon from Feb. 1, 1882, and all costs of said suit. And, how you shall have executed this writ of attachment, you will make due returns to our said Court, and have you then and there this writ.

In Dist. Court, Vernon Parish, Louisiana.

No. 58.

ELBERT S. JEMISON
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

And, now comes defendants and before answering, move this Hon. Court to dissolve and set aside the attachment issued in this cause for the following reasons, to-wit:

1st. That the affidavit and bond upon which said attachment was issued is defective, illegal, void and insufficient, the said affidavit having been made and said executed by Geo. H. Wells, for
63 plaintiff, who was without special authority as the law requires to so make said affidavit and execute said bond for plaintiff.

2nd. That the affidavit on which said attachment was issued is defective, illegal and insufficient in not stating that plaintiff was absent from the parish of Vernon at the time, in not stating that defendants positively were indebted in the amount claimed, and that the same was due, and in not stating that the same was made on affiant's own knowledge and not from information derived from the plaintiff, and moreover, that said affiant did not make said affidavit in Vernon Parish, not before the District Judge of this District, and that C. M. Pearre, of the firm of C. M. Pearre & Co. transferred said note sued on to Elbert S. Jemison, without his knowledge or consent, and without consideration, and that C. M. Pearre is now and was at the time of the subscribing said affidavit and the giving of the attachment bond as much interested in and as much the owner of the note sued on as he ever was, and that said C. M. Pearre was present at the making of said affidavit, and present at the giving of said bond, and was present in the Parish of Vernon, when said affidavit and bond was acted on and when the attachment issued.

3rd. That there was no legal order of Court for the issuing of said attachment.

Wherefore, defendants pray that the said attachment be dissolved and set aside at plaintiff's cost, and for general relief, &c.

J. F. SMITH &
A. J. KEARNY, *Att'ys.*

Filed 8th day of November, 1882.

W. H. SMART,
Cl'k Dist. Court.

Attest:
A true copy of the original.
[SEAL.]

J. J. HICKS, *Clerk.*

64 In Dist. Court, Vernon Parish, Louisiana.

No. 58.

E. S. JEMISON
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Inver.

And, now comes defendants and answering without prejudice to their motion to dissolve attachment, acknowledge indebtedness to plaintiff as claimed, and in all other respects deny the allegations and averments of plaintiff.

J. F. SMITH &
A. J. KEARNY, *Att'ys.*

Filed 13th August, 1883.

W. H. SMART, *Cl'k.*

Attest:
A true copy of the original.

J. J. HICKS, *Clerk.*

To the Hon. S. D. Read, Dist. Judge of 14th Judicial District of Louisiana, holding sessions of Court in and for Vernon Parish in the District and State aforesaid:

The petition of intervention of William J. Knight, a resident of Vernon Parish, Louisiana, with respect, represents to your Honor, that in suit No. 58, on docket, and now pending before your Hon. Court, in and for the Parish of Vernon, entitled Elbert S. Jemison, *vs.* Daniel R. Knight and John A. Lovett, a writ of attachment against the property of said defendants was issued, and that said plaintiffs and C. F. Conerly, sheriff of said Parish of Vernon, have under and by virtue of said writ of attachment so issued in said case, attached and taken in their possession a certain lot of goods, wares and merchandise generally as seen by the return on the back of said writ of attachment which writ is referred to and made part hereof, valued at the sum of fifteen hundred & forty-nine 88/100 dollars, and that he is the legal, just and *bona fide* owner of said property so attached under and by virtue of said writ, and now intervenes in said suit No. 58, claiming said property so attached to belong to him as seen by act of sale and purchase from said

defendants duly recorded in Vernon Parish, Louisiana, and all of which will be duly shown on trial hereof.

65 Whereof, the premises considered, petitioner prays for an order of your Hon. Court, permitting and allowing him to intervene in said suit, and to bond said property and for citation to plaintiff, Elbert S. Jemison, a resident of City, County and State of New York, and citation to defendants, Daniel R. Knight and John A. Lovett, residents of Vernon Parish, Louisiana, and after due trial had, that judgment be rendered by your Hon. Court decreeing him to be the legal, just and *bona fide* owner of said property so attached in said suit, and that the same be released from said attachment, and that he be put and maintained in the quiet and peaceable possession thereof.

Petitioner prays for judgment for costs, all other necessary orders and decrees and for full and general relief, &c.

J. F. SMITH, *Att'y.*

Attest:
A true copy of the original.

—— —— *Clerk*

THE STATE OF LOUISIANA,
Parish of Vernon:

I, William J. Knight, plaintiff in the foregoing petition of intervention, do solemnly swear that the facts and allegations as set forth and contained in the said petition, are true and correct, and that the Hon S. D. Read, Dist. Judge of the 14th Jud. District of Louisiana, is a non-resident of Vernon Parish, and now absent from same. So help me God.

W. J. KNIGHT.

Sworn to and subscribed before me, — 31st day of August, 1882.

[SEAL.] WM. H. SMART,
Clk Dist. Court.

Order.

In Dist. Court, Parish of Vernon, Louisiana.

No. 58.

ELBERT S. JEMISON
vs.
D. R. KNIGHT ET AL.

It is ordered that William J. Knight, plaintiff in the foregoing petition of intervention be and he is hereby permitted and
66 allowed to intervene in the above entitled and numbered suit, and further that he be and is hereby allowed and permitted to bond and replevy the property attached in said suit by giving bond and security as required by law.

In the absence of the Hon. Dist. Judge, done and signed by me as clerk of the District Court, in and for the Parish of Vernon, Louisiana, on this 31st day of August, 1882.

[SEAL.] WM. H. SMART,
Cl'k Dist. Court.

Filed 31st day of August, 1882.

WM. H. SMART,
Cl'k Dist. Court.

Citation.

In Dist. Court, Vernon Parish, La.

No. 58.

ELBERT S. JEMISON
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener

The State of Louisiana to Elbert S. Jemison, a resident of the City, County and State of New York, plaintiff in the above entitled suit, and to Daniel R. Knight and John A. Lovett, residents of the Parish of Vernon, La., defendants in the above numbered suit:

You are hereby cited to appear at the clerk's office held at the court-house, in town of Leesville, Vernon Parish, Louisiana, and comply with the demands contained in the petition of W. J. Knight, intervener, a copy of which accompanies this citation or file your answer thereto in writing in ten days after the service hereof with one additional day for every ten miles between your residence & said office.

Witness the Hon. S. D. Read, Judge with my hand & seal as clerk, Dist. Court, on this 31st day of Aug., 1882.

WM. H. SMART,
Cl'k Court.

Received this citation together with a copy thereof, and a copy of the accompanying petition & order of intervention, Oct. 67 9th, 1882, & on the 10th day of same mo. & year, I served copy of citation & Petition & order of intervention on Geo. H. Wells, Esq., Att'y at Law, by handing the same to him in person in the town of Lake Charles, Calcasieu Parish, La.

Service, $2.50. JULIEN RICHARD, *D'y Sh'ff.*

In Dist. Court, Vernon Parish, La.

No. 58.

ELBERT S. JEMISON
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

The State of Louisiana to Elbert S. Jemison, a resident of the City County and State of New York, and plaintiff in the above entitled suit, and to Daniel R. Knight and John A. Lovett, residents of the Parish of Vernon, Louisiana, and defendants in the above numbered suit:

You are hereby cited to appear at the office of the clerk of the Dist. Court, held at the court-house in the court-house, in town of Leesville, Vernon Parish, La., and comply with the demands contained in the petition of W. J. Knight, intervener in said suit No. 58, a copy of which accompanies this citation, or file your answer thereto in writing in ten days after service hereof with one additional day for every ten miles' distance between your residence & said office.

Witness the Hon. S. D. Read, Judge with my hand & seal as clerk, Dist. Court, on this 31st day August, 1882.

W. H. SMART,
Cl'k Dist. Court.

Received certified — of the within and foregoing petition, citation, &c., &c., on the 23rd day of Oct., 1882, and served same on defendants, Daniel R. Knight and John A. Lovett in person at the residence of John A. Lovett, on 24th day of said month & year.

Distance travelled fifty miles.

Shffs. costs, $7.00.

Also served copies on plaintiff, Elbert S. Jemison, by posting same on the courthouse door on the 9th Oct., 1882.

C. F. CONERLY, *Sh'ff.*

Attest:
A true copy of the original:
[SEAL.]

J. J. HICKS, *Clerk.*

68 In Dist Court, Vernon Parish, Louisiana.

No. 58.

ELBERT S. JEMISON
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

To the Hon. S. D. Read, Judge of 14th Jud. District of La.:

The intervener, William J. Knight, in the above entitled suit, now comes and adopting the allegations in his original petition of

BLURRED

intervention, asks leave to amend the same in this, that plaintiff's in this cause is a non-resident of Louisiana.

Wherefore, he prays that a curator, *ad hoc,* be appointed to represent plaintiff in this cause, and upon whom service of copies of petition of intervention, citation, &c., be served.

J. F. SMITH,
A. J. KEARNY, *Att'ys.*

THE STATE OF LOUISIANA,
Parish of Vernon:

I, W. J. Knight, do solemnly swear that the facts and allegations contained in the foregoing petition are true and correct, and that the Hon. S. D. Read, Judge of 14th Jud. Dist. of La., is a non-resident of Vernon Parish, and now absent from same.

W. J. KNIGHT.

Sworn to and subscribed before me, 14th day of October, 1882.
[SEAL.] WM. H. SMART,
Cl'k Dist. Court.

OFFICE OF CL'K DIST. COURT.

THE STATE OF LOUISIANA,
Parish of Vernon:

Let W. A. Carter, an Att'y at Law, of Leesville, La., be, and he is hereby appointed curator, *ad hoc,* to represent plaintiff, Elbert S. Jemison, in this cause, and upon whom copies of petition of intervention, citation, &c., be served, as prayed for.

In absence of Dist. Judge, done and signed by me, as witness, my hand and seal on this 14th day of October, 1882.

[SEAL.] WM. H. SMART,
Cl'k Dist. Court.

69 I hereby accept the above appointment, and do hereby accept service of copies of the original petition of intervention, citation, affidavits, order, this petition, &c., as made on me on this day, October, 1882.

W. A. CARTER,
Curator, ad hoc.

Filed 14th day of October, 1882.

WM. H. SMART,
Cl'k Dist. Court.

Attest:
A true copy of the original.
[SEAL.] J. J. HICKS, *Clerk.*

PAGES

In the District Court of Vernon Parish, Louisiana, 12th Judicial District, November Term, 1882.

No. 58.

ELBERT S. JAMISON
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

The plaintiff in the above numbered and entitled suit for answer to the petition of intervention filed therein by William J. Knight, the intervener in said suit, deny all and singular the facts and allegations contained in said petition of intervention, except the allegation that they have attached, as the property of the defendants in said suit, the property claimed by said intervener.

Plaintiff specially aver that said intervener's alleged title to said property is a pretended deed of sale to him from the defendants in said suit, and that said pretended deed of sale, and the pretended contract of sale evidenced by said deed, were and are a mere and fraudulent simulation and illegal, null and void.

Wherefore, plaintiffs pray that said intervener's demand may be rejected and dismissed by a final and definite judgment at said intervener's cost.

GEO. H. WELLS AND
W. A. CARTER,
Attorneys for Plaintiffs.

Filed Nov. 11, 1882.

WM. H. SMART,
Clk Court.

70 Attest:
A true Copy of the original.
[SEAL.] J. J. HICKS, *Clerk.*

In the 14th Judicial District Court of the State of Louisiana in and for the Parish of Vernon, November Term, 1883.

No. 58.

ELBERT S. JEMISON
vs.
D. R. KNIGHT ET AL., W. J. KNIGHT, Intervener.

By reason of the law and the evidence in the above numbered and entitled suit being in favor of the plaintiff and against the defendants therein, as to plaintiffs' moneyed demand in said suit, a trial having been had upon the merits after issue joined by answer, and the defendants in their answer, having admitted plaintiff's moneyed demand, and the Court considering the 3rd ground of defendants' motion to dissolve the attachment in said suit well taken, to-wit, the ground that the order of attachment is insufficient in

terms, it is ordered, adjudged and decreed that the defendants' motion to dissolve said attachment be and the same is hereby sustained upon the 3rd ground of said motion to dissolve the same, to-wit, on the ground that the order of attachment is insufficient in terms, and that said attachment for that reason, be and the same is hereby dissolved, and that the attached property be relieved from said attachment, and that the costs of said attachment be paid by Elbert S. Jemison, the plaintiff in said suit.

It is further ordered, adjudged and decreed that the plaintiff, Elbert S. Jemison, do have judgment for and recover from the defendants, Daniel R. Knight and John A. Lovett, *in solido,* the sum of eleven hundred and seventy-one 89/100 dollars ($1171 89/100), with eight per cent. per annum interest thereon from February 1, 1882, until paid, and all costs of said suit, except the costs of said attachment, and the cost of the intervention therein.

And by further reason of the law and the evidence in said suit being in favor of the intervener and against the plaintiffs therein, as to the intervention in said suit, it is further ordered, adjudged and decreed that said intervener, William J. Knight, do have judgment against said plaintiff, Elbert S. Jemison, recognizing and decreeing said intervener to be the rightful owner of the property attached in said suit, under and by virtue of said intervener's purchase thereof from said defendants, by the act of sale executed July 28, 1882, in evidence of said suit, which sale is hereby decreed to be a real and not a simulation, and that said intervener do have judgment for and recover from said plaintiff, Elbert S. Jemison, all costs of the intervention in said suit, including the sum of ten dollars to be taxed with the costs of said intervention for the fee allowed by law to W. A. Carter, Esq., plaintiff's curator, *ad hoc,* in the matter of said intervention.

71

Done, read and signed in open Court, November 8, 1883.

STEPHEN D. READ,
Judge 14th Judicial District of the State of Louisiana.

Filed Nov. 8, 1883.

WM. H. SMART, *Clk.*

Attest:
A true copy of the original.
[SEAL.]

J. J. HICKS, *Clerk.*

Indorsed: Elbert S. Jemison, *vs.* Dan R. Knight, *et al.,* W. J. Knight, Intervener. Filed Feb'y 16th, 1904. W. Jackson, Clerk.
2nd Indorsement: Filed in evidence "G," Oct. 31/06, in suit No. 276. W. Jackson, Clerk.

Verdict of Jury.

We the jury find verdict in favor of plaintiff.
Nov. 1st, 1906.

W. B. McCORMICK, *Foreman.*

Indorsed: No. 276. Knight *vs.* Lutcher & Moore Lbr. Co. Verdict of Jury. Filed Nov. 2nd, 1906. E. C. Jackson, Clerk.

72 In the United States Circuit Court in and for the Western District of Louisiana, City of Shreveport.

No. 276.

WM. H. KNIGHT ET ALS.
vs.
H. J. LUTCHER ET ALS.

In the above cause, by virtue of the verdict of the jury finding in favor of the plaintiffs in the above cause, the law and evidence being in favor thereof, it is ordered, adjudged and decreed that the plaintiffs, William H. Knight, John A. Lovett, Miss Stella Knight and Mrs. Florence Knight, wife of James Durham, do have and recover judgment against the defendants, H. J. Lutcher, and the Lutcher & Moore Lumber Company, decreeing the plaintiff to be owners of an undivided one-half interest in and to the following described lands set forth in the plaintiffs' petition in this cause, as follows, to-wit:

South half of Section Thirty-three (33), in Township One (1), south of Range Eleven (11), West; Southeast quarter of Northwest quarter, Southwest quarter of Northeast quarter, west half of Southeast quarter, and East half of Southwest quarter of Section Five (5), West half of Southwest quarter of Seventeen (17), Northeast quarter of Southeast quarter of Section Eighteen (18), East half of Northwest quarter and Northeast quarter of Northeast quarter of Section Twenty (20); North half of North half of Section Twenty-one (21); Northwest quarter of Northwest quarter of Section Twenty-two (22); South half of the Northeast quarter, Southeast quarter of Northwest quarter, West half of Southwest quarter, Northeast quarter of Northwest quarter and the Northwest quarter of Southeast quarter of Section Twenty-three (23); Southwest quarter of Northwest quarter of Section Twenty-four (24); and the Northwest quarter of the Northeast quarter of Section Thirty-four (34); all in Township Two (2), south of Range Eleven (11), West; in the Parish of Vernon, State of Louisiana, and as such that they be put in possession of the same.

It is further ordered, adjudged and decreed that the defendants pay all costs of the suit.

Thus done read and signed on this 3rd of November, 1906.

ALECK BOARMAN, *Judge.*

Indorsed: No. 276. Wm. H. Knight *et als. vs.* H. J. Lutcher *et als.* Judgment. Filed Nov. 3rd, 1906. E. C. Jackson, Dy. Clerk.

73 Circuit Court U. S., West. Dist. of La.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

In this case now comes defendants and shows unto the Court that the rulings of the Court and verdict of the jury in the above entitled cause are erroneous and contrary to the law and evidence, and that the following errors were committed therein:

In refusing to permit defendants to file in evidence the deposition of Dr. J. A. Lovett, showing the truth of the allegations in their answers herein, as fully set forth in bill of exceptions.

In refusing to permit the defendants to file in evidence the depositions of said Dr. J. A. Lovett, for the purpose of showing that the credit portion of the purchase price of the sale of July 28th, 1882, from Knight & Lovett, to W. J. Knight, was paid by the sale of the land in question, and in refusing them permission to prove by T. J. Word, the same state of facts.

In refusing permission to the defendants to file their third and amended and supplemental answer herein set forth in bill of exceptions.

In refusing to charge the jury with regard to the prescription of ten years, though requested by defendants to so charge the jury as shown in Bill of Exceptions No. 4.

In refusing to charge the jury that in order for the plaintiffs to recover, they must have shown that the community between their deceased mother and father had been liquidated and settled by judgment of the Court, as set forth in Bill of Exceptions No. 5.

In failing to charge the jury in regard to any phase of the law of the case.

For all of these errors committed by the Court, defendants ask that a new trial be granted them, and for judgment in their behalf and for which they will ever pray.

HOLLAND & HOLLAND,
MASON & WILLIAMS,
ALEXANDER & WILKINSON,
Attorneys.

74 Indorsed: No. 276. W. H. Knight *et al.*, *vs.* Lutcher & Moore Lbr. C. Motion for New Trial. Filed Nov. 3rd, 1906. E. C. Jackson, Dy. Clerk.

Circuit Court of the United States for the Western District of Louisiana.

No. 276.

W. H. KNIGHT
vs.
LUTCHER & MOORE.

In this cause it is ordered that the defendants have thirty days from this date in which to prepare and file bills of exceptions and to submit and take a writ of error from the proceedings had in the above cause.

Done and signed officially on this 17 day of November, 1906.

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. W. H. Knight *vs.* Lutcher & Moore Lumber Co. Order granting time for filing Bills of Exception and Writ of Error. Filed Nov. 19th, 1906. W. Jackson, Clerk.

U. S. Circuit Court, West. Dist. of La.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

Be it remembered that on the trial of the above case counsel for the defendant offered in evidence the depositions of Dr. J. A. Lovett, a material and competent witness in their behalf which are hereto annexed and made part of this exception, for the purpose of proving the allegations in their answers in said cause which was objected to by counsel for the plaintiffs for the following reasons:

1st. That parole testimony cannot be introduced to change vary or prove title to real estate.

2nd. That what ever title the defendant claim in this case is derived from W. J. Knight, & they are estopped from attacking title of W. J. Knight.

75 3rd. That defendants are not shown to — creditors of Knight & Lovett, and therefore have no interest in contesting the deed from Knight & Lovett to W. J. Knight.

4th. That the plea of *res judicata* filed in this case is binding on defendants.

5th. That the allegations of defendants' answer of fraud or error, in any manner, shape or form.

Which objections were sustained by the Court and the defendants by counsel then and there excepted and reserved this their bill of exceptions at the time, which was read, signed and filed on this the 17th day of November, 1906.

ALECK BOARMAN, *Judge.*

The above has been submitted to me.

A. J. MURFF.

(Indorsed:) No. 276. W. H. Knight *et al., vs.* Lutcher & Moore L'b'r Co. Def'ts' Bill of Exceptions No. 1. Filed Nov. 19th, 1906. W. Jackson, Clerk.

* * * * * * *

Direct Interrogatories to Dr. J. A. Lovett.

Attached to Defendants' Bill of Exceptions No. 1.

First. Please state your name, age and residence.

Second. Did you ever live in Vernon Parish, Louisiana, and if so when and how long?

Third. Please state what was your business in Vernon Parish, La.; and if you have stated that you — a member of the firm of Knight and Lovett, please state the initials of Mr. Knight, and state what relation you bore to him, if any, and what relation you are to William H. Knight, and to W. J. Knight, and what relation was Dan R. Knight to W. J. Knight and to William H. Knight.

76 Fourth. In July, 1882, you were a member of the firm of Knight and Lovett, were you not?

Fifth. On file in the papers in this case is a deed or act of sale dated July 28, 1882, wherein Knight and Lovett, a firm composed [of] Dan R. Knight and J. A. Lovett, deeded the land in controversy in this suit, and all their movable property, to W. J. Knight. The consideration expressed in the deed is five hundred dollars cash, and fourteen thousand five hundred dollars due on November 1, 1882. Please state what was the actual consideration for this deed or act of sale, and why was it made.

Sixth. Please state fully the circumstances leading up to said act of sale, and state fully what was the understanding or agreement between the firm of Knight and Lovett and W. J. Knight in regard to said act of sale.

Seventh. Please state whether or not the five hundred dollars in cash recited in said deed was paid by W. J. Knight; and if it was paid, whose money was it, and where did W. J. Knight get the money, and who from, and for what purpose?

Eighth. Please state whether or not the note for fourteen thousand five hundred dollars ($14,500.00) was executed by W. J. Knight and delivered to Knight and Lovett; and if so, what was afterwards done with the note.

Ninth. Please state whether or not W. J. Knight ever paid Knight and Lovett said note of fourteen thousand five hundred dollars, or any part of it; and if not, why not.

Tenth. Please state fully what was the purpose of executing said act of sale.

Eleventh. After said act of sale or deed was executed, did the property mentioned in said act of sale and deed belong to W. J. Knight or was it the agreement that it still belonged to Knight and Lovett.

Twelfth. Is it or not a fact that said act of sale was executed by Knight and Lovett to W. J. Knight for the purpose of placing the property in the hands of W. J. Knight, who was to hold it as the agent for Knight and Lovett, and was to dispose of it, and turn the proceeds over to Knight and Lovett, and said W. J.
77 Knight was to receive his salary for his services in the matter?

Thirteenth. Please state fully what was the agreement with W. J. Knight in regard to said property and said act of sale—giving all the details.

Fourteenth. Was the understanding with W. J. Knight prior to the execution of the act of sale?

Fifteenth. If you have said that W. J. Knight was to take said property and handle it as the agent of Knight and Lovett, and was to convert the movable property into cash and divide the proceeds between yourself and Dan R. Knight, and was to either hold the real estate for Knight and Lovett and convey it back to you, or sell it and give you the proceeds—please state whether or not W. J. Knight executed said trust or performed the agreement he made with Knight and Lovett at the time he accepted said agency.

Sixteenth. If in answer to the above interrogatory you have said that he did perform said trust, then please state how, and in detail.

Seventeenth. There is on file in the papers of this case in this Court an act of sale, or deed, dated February 5, 1887, wherein W. J. Knight conveyed an undivided one half interest in the land in controversy in this suit to Viola P. Knight. Who was Viola P. Knight, and why was this conveyance made by W. J. Knight to Viola P. Knight?

Eighteenth. What was the consideration for the transfer from W. J. Knight to Viola P. Knight?

Nineteenth. If you have said that W. J. Knight conveyed an undivided one-half interest in the land in controversy to Viola P. Knight, the wife of Dan R. Knight, in order to carry out his agreement to hold said real estate until Knight and Lovett directed him either to sell it or to convey it back to him—then please state what became of your one-half interest in the land.

Twentieth. On file in the papers in this case is an act *is an act* of sale or deed dated February 7, 1887, wherein W. J. Knight conveyed an undivided one-fourth in this land to J. C. Knight.
78 Who was J. C. Knight, and what was the consideration for the deed from W. J. Knight to J. C. Knight of an undivided one-fourth interest in this land? Who received the consideration paid by J. C. Knight for this one-fourth interest?

Twen*tieth*-First. If in answer to the above interrogatory you say that you sold one half of your one half interest, to-wit, one fourth interest, in the land in controversy in this suit, to J. C. Knight, and that you received the consideration therefor—please state what you did with the other one fourth interest you owned in the land at that time.

Twenty-Second. If you have said that on February 7, 1887, you sold J. C. Knight one half of your one half interest, and J. C. Knight paid you for it, and you instructed W. J. Knight to convey a one

fourth interest in the entire land to J. C. Knight and that W. J. Knight at that time purchased the other one fourth interest that you still owned in the land—then please state whether or not this was the first time that W. J. Knight really owned any interest in the land.

Twenty-Third. Please state when W. J. Knight first paid you any money for an interest in the land, and how much interest he acquired.

Twenty-Fourth. At the time that Knight and Lovett conveyed the land to W. J. Knight state whether or not you intended that he should own the land, or was he simply made your trustee or agent.

Twenty-Fifth. Who is James Cavenaugh, and what position did he occupy with the firm of Knight and Lovett in 1882?

Twenty-Sixth. Please state whether or not W. J. Knight in 1882 paid Knight and Lovett anything of his own for the land in controversy in this suit.

Twenty-Seventh. Please state when was the first time W. J. Knight had ever paid anything at all for any part of this land.

Twenty-Eighth. If in answer to the preceding interrogatory you have stated that the first time W. J. Knight ever paid anything for any interest in this land was in 1887—then please state why
79 and under what agreement he was holding the land prior to that time.

ALEXANDER & WILKINSON,
HOLLAND & HOLLAND,
MASON WILLIAMS,
For Defendants.

In the United States Circuit Court for the Western District of Louisiana.

No. 276.

WILLIAM H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Now comes the plaintiff-, William H. Knight, *et al.*, by counsel and specially reserving all rights to object to the testimony sought to be gained from Dr. J. A. Lovett, and by no means intending to waive any rights by this *X amination* [cross examination], propounds the following questions to Dr. J. A. Lovett:

First. Were you not a witness in a suit in Vernon Parish, Louisiana, in 1883, entitled Albert S. Jemison *vs.* D. R. Knight *et al.* W. J. Knight, Intervener and 3rd opponent, No. 58, on said Court docket, wherein the plaintiffs, Albert S. Jemison, seized part of the property included in the sale of July 28th, 1882, made by D. R. Knight and yourself, as Knight & Lovett to W. J. Knight and attempted to make it subject to the debts of Knight & Lovett, and wherein W. J. Knight intervened and claimed ownership by virtue of the sale to him by Knight & Lovett of July, 1882?

Second. Did you not, as a witness in said cause, mentioned in first interrogatory, swear in open Court under solemn oath that the sale of July 28th, 1882, in which the land in this suit was included, made by D. R. Knight and yourself, as Knight & Lovett to W. J. Knight, was a *bona fide* sale, made in good faith, or words to that effect.

Third. Did you not also swear in open Court on same trial that the five hundred dollars mentioned as part of the cash price in said sale of July 28, 1882, was paid by W. J. Knight to Knight & Lovett? And that the note for $14,500 given as part of purchase price by W. J. Lovett to Knight & Lovett was paid by W. J. Knight, or words to that effect?

80 Fourth. Were you not a witness in the District Court of Vernon Parish, Louisiana, in 1883, in which McIlhenny Company, in suit No. 60 of said Court, entitled McIlhenny Company *vs.* Knight & Lovett, W. J. Knight Intervener and 3rd opponent, wherein there was contest as to the validity of sale of July 28, 1882, made by Knight & Lovett or D. R. Knight and J. A. Lovett to W. J. Knight?

Fifth. If you state that you were state if you did not swear in that case before said Court, that the sale of July 28, 1882, made by you and D. R. Knight to W. J. Knight, in which the land now in controversy was included, was a *bona fide* sale, and that W. J. Knight paid both the cash and credit consideration of the sale, or words to that effect?

Sixth. Did you not testify in this case, when it was up for trial before Judge Boarman at Shreveport, in 1905, that you had sq sworn before the District Court of Vernon Parish in said cases in 1883, and that you, by your testimony, led the Court to believe that it was a *bona fide* sale?

Seventh. If in answer to direct interrogatories propounded by defendants you now answer that *is* [it] was not a *bona fide* sale, and that you had mislead the Court, please state whether you were swearing falsely in the Vernon District Court in said causes of Albert S. Jemison *vs.* Knight & Lovett, W. J. Knight 3rd opponent and McIlhenny Company *vs.* Knight & Lovett W. J. Knight 3rd opponent, or swearing falsely now?

A. J. MURFF &
M. J. CUNNINGHAM, JR.,
Attorneys for Plaintiffs.

(Indorsed:) No. 276. Wm. H. Knight *et al vs.* Lutcher & Moore Lbr. Co. Direct Interrogatories to Dr. J. A. Lovett.

Direct Interrogatories to Dr. J. A. Lovett, Attached to Def'ts' Bill of Exception No. 1.

THE UNITED STATES OF AMERICA,
Eastern District of Texas, the State of Texas,
County of Liberty, ss:

The examination of witness *de bene esse* beginning on the
81 13 day of June, 1906, on behalf of the defendants, before me, J. F. Dabney, a notary public in and for Liberty County, Texas, at my office in the town of Liberty, in the said district of Texas, in the State and county aforesaid, in a certain suit now pending and undetermined in the Circuit Court of the United States for the Western District of Louisiana, at Shreveport, in said district, wherein Wm. H. Knight, *et al.*, are plaintiffs, and Lutcher & Moore Lumber Company, *et al.*, are defendants.

Dr. J. A. LOVETT, a witness produced on behalf of the defendant, being first duly sworn deposes and says as follows:

To the First Answer. My name is J. A. Lovett, my age is 54 years; my residence is Liberty County, Texas.

Second. I live in Vernon Parish, La., from 1855 to 1881 or 1882.

Third. I practiced medicine and was engaged in the timber and mercantile business. I was a member of the firm of Knight and Lovett. D. R. Knight was the name of my business partner; he was my uncle. I am a cousin to William H. Knight and a cousin to W. J. Knight. Dan R. Knight was an uncle to William H. Knight.

Fourth. Yes.

Fifth. That was the actual consideration passed, but the object was to protect ourselves against our creditors at that time.

Sixth. We lost a lot of timber in the overflow of Sabine river and were owing a lot of debts in Galveston and Orange, and other places, but principally in Galveston and Orange and we made this sale for the purpose of protecting ourselves against those debts. It has been so long ago that I can not give a detailed account of all the circumstances leading up to the transaction, but the above is general statement of same. The understanding was that W. J. Knight would hold the property for us, and that on the surrender of his note and the $500.00, he was to deed the property back to us.

Seventh. The money was paid as recited. To the best of my recollection the money belonged to Knight & Lovett, but I can
82 not be positive about that now. I am not positive that it was as much as $500.00 either, but I know there was some paid; I do not now remember definitely the amount. It was for the purpose of closing that deal.

Eighth. Yes. It was returned to him when he transferred a lot of the property back to the parties. In the meantime D. R. Knight and I had dissolved partnership, and also D. R. Knight's wife had sued him for a partition of their property. W. J. Knight transferred to D. R. Knight's wife the interest of D. R. Knight in the land.

The proceeds of the sale of the personal property were paid to D. R. Knight and myself.

Ninth. He paid it by returning the real property and personal property as stated in answer to 8th interrogatory.

Tenth. I answered this in answer to 6th direct interrogatory. Also in answer to 5th direct interrogatory.

Eleventh. It was agreed between us that it was to belong [to] Knight & Lovett.

Twelfth. Yes.

Thirteenth. I can not give it in detail, because I do not now remember it all, but it was understood that W. J. Knight was to be the agent of Knight & Lovett and return the property to us, and we were to pay him a salary for his services.

14th. Yes.

15th. Yes, that was the agreement, except that he was not to sell any of the real estate. He performed the agreement, except that he did not convey any of the land back to me.

16th. He performed the trust as stated in answer to 15th, 8th and 9th direct interrogatories.

17th. Viola P. Knight was the wife of D. R. Knight. I do not know of my own knowledge why the conveyance was made to Viola P. Knight, but it is my understanding that it was transferring D. R. Knight's interest in the land to his wife to be held by her for D. R. Knight.

18th. I do not know.

19th. My understanding, as well as I now recollect, is that
83 I sold my interest in the land to W. J. Knight and J. C. Knight or W. J. Knight and Viola P. Knight, I do not remember which, but I think there were two of them in the transaction with me. There was no necessity for a deed to be made to me as I sold to them, and the property was already in W. J. Knight's name.

20th. J. C. Knight was a cousin of W. J. Knight. I do not know what the consideration of the deed was. They gave me so much money for my interest, and they arranged the matter between themselves, and I do not know what they did.

21st. I sold all of my interest in the land to W. J. Knight and J. C. Knight, as best I now recollect, but I do not now remember who paid me the money for it, nor do I know what they did between themselves with it. I owned a one-half interest in the land.

22nd. I did not sell any one-fourth interest to any one, but sold my entire one-half interest to them, and do not know what arrangements they afterwards made. This was the first time that he owned any interest in the land under our original agreement between Knight & Lovett and W. J. Knight.

23rd. I do not remember how much he paid for the land, but it was prior to the execution of the deed from W. J. Knight to J. C. Knight. My understanding was that I sold the land to W. J. Knight and J. C. Knight in partnership, but I do not know what interest each had. I sold all my interest at one time.

24th. He was just to hold it as trustee or agent for us.

25th. He was bookkeeper and clerk for Knight & Lovett in 1882.

26th. The original transaction as before testified to in these answers is all that he paid Knight & Lovett in 1882.

27th. The original transaction, as testified to, in 1882, and in 1887, when he and J. C. Knight bought my interest in it, were the only times that he paid anything for the land that I know of. He paid other money at times, but it was the proceeds of the sale of the personal property.

28th. He was holding the land prior to that time as trustee or agent, under our original agreement.

84 *Answers of the Witness, Dr. J. A. Lovett, to Cross Interrogatories Propounded by Plaintiffs, William H. Knight, et al.*

First. I was a witness in several suits by creditors against D. R. Knight *et al.*, and there were some in which I was not a witness, and I do not remember whether or not I was a witness in the suit mentioned.

2nd. I do not remember what my testimony was in any of those suits, and I do not remember whether or not I testified in that particular suit.

3rd. I do not recollect what my testimony was in those cases.

4th. I do not recollect what my testimony was in those cases, and do not remember whether or not I testified in that particular case.

5th. I do not remember, as I have already stated.

6th. My memory is that I testified before Judge Boarman that I did not recollect, but I suppose that if I testified at all I did so testify.

7th. I do not remember what I testified to before in those cases.

J. A. LOVETT.

Sworn to and subscribed before me, this the 13th day of June, 1906.

[SEAL] J. F. DABNEY,
Notary Public, Liberty Co., Texas.

* * * * * * *

(Indorsed:) No. 276. In Circuit Court of United States for Western District of Louisiana. Wm. H. Knight, *et al.*, *vs.* Lutcher & Moore Lumber Co., *et al.* Depositions of the Witnesses, Dr. J. A. Lovett.

85 Circuit Court U. S. West. Dist. of La.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

Be it remembered, That on the trial of this case counsel for the defendant tendered an amended and supplemental answer in words and figures as follows:

United States Circuit Court, Western District of Louisiana.

No. 276.

WM. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO. ET AL.

In this case now comes the defendant and adopting all of the allegations and prayers of the original and amended answers heretofore filed by them, for further answer to the demands of the plaintiff aver in the alternative that if it be held that the said sale from Knight & Lovett to W. J. Knight of the property in contest was a valid sale, that then and in that event defendants aver that the note for fourteen thousand five hundred dollars, representing the credit portion of the said sale of July 28th, 1882, from Knight & Lovett to W. J. Knight, was paid only by the said [sale] of the property mentioned in said act, that is to say, that the said note of fourteen thousand five hundred dollars was a valid claim against the community existing between said W. J. Knight and the mother of said plaintiff, and the said note was paid by the proceeds of sale of the property here in contest and that the said heirs of the said Mrs. Knight cannot contest the title of said property without paying their share of the community debts so paid out of the proceeds of sale of said property, and no suit can be maintained by them without paying one-half of fourteen thousand five hundred dollars so paid by the sale of said property, which amount enured to their benefit in the payment of a community debt for which the said plaintiffs were equally bound with the said W. J. Knight.

Wherefore defendants pray that this amended answer may be filed and for judgment rejecting the demands of the plaintiff at their cost, and for general relief.

ALEXANDER & WILKINSON,
HOLLAND & HOLLAND,
MASON WILLIAMS,
Attorneys for Defendants.

86 To the filing of which counsel for the plaintiffs objected that same came too late, and changed the issues for the defense, and that same was in fact a plea of want of tender which should have been *filed in limine litis*, which objections were sustained by the Court and the filing of said amended and supplemental answer refused and denied by the Court. Said amended answer was only tendered after the Court had refused to permit the introduction of the evidence of Dr. J. A. Lovett, and counsel for the defendants were surprised by such ruling of the Court in rejecting the said evidence on account of the fact that when said case was first tried in said Court, the presiding judge passed on its admissibility and permitted such evidence to be received, and counsel were of the opinion that the ruling of the Court in the present trial would be the same as on the former trial, and therefore took no steps to provide for the

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ontingency of a change in the opinion of the Court by amending heir answers so as to clearly make such evidence admissible.

To which ruling of the Court counsel for the defendants then and here excepted and reserved this their bill of exceptions which was read, signed and filed on this the 7 day of November, 1906.

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lbr. Co. Defts. Bill of Exceptions No. 2. Filed Nov. 19th, 1906. W. Jackson, Clerk.

U. S. Circuit Court, West. Dist. of La.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

In this case after the Court had refused permission to file the amended and supplemental answer, set forth in bill of exo-ption No. 2, counsel for the defendants offered the evidence of Dr. J. A. Lovett taken under commission and made part of himm [bill] of exception No. 1, which is specially referred to as a part hereof, and the witnesses T. J. Word and A. W. McCranie, good and competent witnesses for the purpose of showing that the fourteen thou-
87 sand five hundred dollars note, mentioned in the act of sale of date July 28th, 1882, from Knight & Lovett to W. J. Knight of the land in controversy, which deed and act of sale is hereto attached as a part hereof, was paid by W. J. Knight after the death of his wife, the mother of the plaintiffs, by the sale of the land in controversy and that the proceeds of sale of the land in controversy was used to pay the part of the purchase price aforesaid which was secured by a vendors privilege on said land, and that the identical proceeds of sale of said land in controversy was used only for that purpose such offering of evidence being for the purpose of forcing said plaintiffs to refund or pay one-half of said note of $14,500.00 which was a community debt, before they should claim any part of the land in question.

Which evidence was objected to by counsel for the plaintiffs on the grounds that:

1st. That under allegation of defendants answer they have not set up any settlement of the community between W. J. Knight and his deceased wife and they should not be allowed to contest the same.

2nd. That defendants have no right to demand such settlement or attach the same in this collateral manner.

3rd. That the receipted note is best evidence of its payment.

4th. That the amendment is in the nature of a want of tender and comes too late, and is inconsistent with original and changes the issue, and should not be allowed after the case has gone to trial.

Which objections were sustained by the Court and the said evi-

dence excluded and no evidence in support of such theory or contention was permitted by the Court to be heard by the jury trying the case, to which ruling of the Court counsel for the defendants then and there excepted and reserved this their bill of exceptions which was read, signed and filed on this the 17 day of November, 1906.

ALECK BOARMAN, *Judge.*

The above has been submitted to me.

A. J. MURFF, *Att'y for Plaintiff.*

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher
88 & Moore Lbr. Co. Defts. Bill of Exceptions No. 3. Filed Nov. 19th, 1906. W. Jackson, Clerk.

Circuit Court of U. S., West. Dist. of La.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

Be it remembered that in this case, defendants had plead the prescription of ten years in bar of plaintiffs rights and had filed and placed in evidence an authentic act of sale to them of the land in question of date 1889, and had shown that they had paid the taxes on said land since their purchase, the same being wild or woodland, before the jury retired requested the Court to charge the jury then trying the case as follows:

"The defendants in this case have filed a plea of ten years prescription, urging that they have held the property in question under a just title and in good faith for more than ten years before this suit was brought. I charge you that the title under which they hold may be denominated a 'just title,' valid on its face, and if you find that they have held such title for more than ten years, in good faith believing that they were the owners of the property, then I charge you that the plea of prescription ought to be sustained, unless the evidence has shown some fact that would prevent the running of prescription against the plaintiffs."

Which charge the Court refused to give, nor did the Court cover said requested charge in its general charge to the jury, to which ruling of the Court counsel for defendants before the jury retired and in their presence then and there excepted.

To which refusal of the Court to so instruct the jury counsel for defendants then and there excepted and presents this their bill of exceptions which was signed and filed on this the 7 day of November, 1906.

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lbr. Co. Defts. Bill of Exceptions No. 4. Filed Nov. 19th, 1906. W. Jackson, Clerk.

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89 Circuit Court U. S., West. Dist. La.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

Be it remembered that on the trial of this case counsel for defendants requested the Court to charge the jury as follows:

"C."

In this case the plaintiffs claim as heirs of their mother one half interest in the property in question on the ground that it was [the word "No" on margin of sheet] bought during the lifetime of their mother, during the existence of the community of acquets and gains between her and their father, W. J. Knight, and was sold by their father after the death of their mother. I charge you that in order for them to recover that it is necessary for them to show that the community between their father and mother has been settled and liquidated by the payment of its debts, and until they do so they cannot recover any interest in any specific piece of property. No.

Which said special charge was not covered by the Court in his general charge to the jury, and no evidence had been received showing that the community between W. H. Knight and his deceased wife, the mother of the plaintiffs, had been liquidated and settled, and the residium of such community ascertained, which charge the Court refused to give to the jury. By the Court:

To which ruling of the Court in refusing such instructions counsel for defendants then and there excepted before the jury retired, and present this their bill of exceptions, which was signed and filed on this the 7 day of November, 1906.

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lbr. Co. Defts. Bill of Exceptions No. 5. Filed Nov. 19th, 1906. W. Jackson, Clerk.

90 Circuit Court U. S., West. Dist. of La.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO. ET AL.

Be it remembered that in the above entitled case counsel for defendant moved and asked the Court to grant a new trial on the grounds and for the reasons set forth in said motion which is hereto

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annexed and made part hereof, which motion for a new trial was overruled by the Court.

To which ruling of the Court counsel for defendants then and there excepted and reserved this their bill of exceptions, which was read, signed and filed on this the 7 day of November, 1906.

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lbr. Co. Defts. Bill of Exception No. 6. Filed Nov. 19th, 1906. W. Jackson, Clerk.

United States Circuit Court, Western District of Louisiana.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

The defendants, Lutcher & Moore Lumber Company, and G. Bedell Moore and H. J. Lutcher, represents to the Court that herein on or about the 3rd day of November, 1906, this Court entered judgment herein in favor of the plaintiffs and against these defendants in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

Wherefore these defendants pray that a writ of error may issue to the United States Circuit Court of appeals for the Fifth Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Circuit Court of Appeals, and
91 until such hearing is had, that no further proceedings be had in your said Court.

ALEXANDER & WILKINSON,
HOLLAND & HOLLAND,
MASON WILLIAMS,
Attorneys for Defendants.

Circuit Court for Western District of Louisiana.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

This the 17th day of November, 1906, came the defendants by their attorneys and filed herein and presented to the Court their petition praying for a writ of error intended to be urged by them, also praying that a transcript of the record and proceedings and papers upon which the judgment herein was rendered duly authenticated may be sent to the United States Circuit [Court] of Appeals

for the Fifth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the defendants giving bond according to law in the sum of five thousand dollars, which shall operate as a supersedeas bond.

Done and signed officially on the date above written, 17th Nov., 1906.

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore Lumber Co., *et al.* Petition for Writ of Error and Appeal and Order of Granting Same. Filed Nov. 19th, 1906. W. Jackson, Clerk.

In United States Circuit Court for Western District of Louisiana.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LBR. CO.

92 The defendants in this action in connection with their petition for a writ of error, makes the following assignment of errors, which they aver occurred upon the trial of the cause, to-wit:

1. The Court erred in the rejection of evidence offered by the defendants in the following instances, to-wit:

(*a*) In rejecting the evidence of Dr. J. A. Lovett, who in effect testified that the land in controversy formerly belonged to a partnership known as "Knight & Lovett" of which the witness was the junior member, who in order to confer on W. J. Knight, the father of the plaintiff, the fullest powers of agency, purported to transfer to him the land in controversy for a stated consideration of fifteen thousand dollars, five hundred of which purported to have been paid in cash and the balance in one note for fourteen thousand five hundred dollars, due at one month. But that the five hundred dollars purporting to have been paid in cash was the money of Knight & Lovett, and the fourteen thousand five hundred dollar note was never paid by W. J. Knight in any way until long after the death of his wife, and that then it was paid in carrying out the agreement made before and at the time of the sale to W. J. Knight on July 28th, 1882, whereby W. J. Knight agreed to hold the property in question as the trustee and agent of Knight & Lovett. That in all of the sales made of the property in controversy by W. J. Knight, the father of the plaintiff, after the death of his wife and their mother, the proceeds of such sale were delivered to Knight & Lovett, the former vendors, in pursuance of said agreement, as will fully appear by the testimony of said Dr. Lovett attached to and forming part of the defendant's bill of exception No. 1.

2. In rejecting that portion of the evidence of Dr. J. A. Lovett, a witness for the defendants, which was offered to show and which

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did show that the credit portion of the purchase price of W. J. Knight from Knight & Lovett, on date July 28th, 1882, was paid in and about 1889, out of the sales made by W. J. Knight of the land in controversy, and that the proceeds of such sale so made by W. J. Knight were used to pay the credit portion of such purchase price as will fully appear by the testimony of said J. A. Lovett annexed and forming a part of defendant's bill of exception No. 1, and as fully set forth in defendant's bill of exception No. 3.

(*a*) In excluding the testimony of the witnesses T. J. Word and A. W. McCranie, offered on behalf of the defendants to show that the credit portion of the purchase price of the sale from
93 Knight & Lovett to W. J. Knight of date July 28th, 1882, to the land in controversy was paid after the death of the wife of W. J. Knight, the mother of the plaintiffs by the sale of the land in controversy, and that the proceeds of the said sale of land in question was used to pay the credit portion of the purchase price mentioned in said sale, which was secured by a vendor's privilege on said land, and that the identical proceeds of sale of said land in controversy was used only for that purpose, as all of which is fully set forth in defendants' bill of exception No. 3.

3. The Court erred in refusing to permit the defendants to file their third amended answer, which is attached to and made part of defendants' bill of exception No. 2.

4. The Court erred in making the charge to the jury in refusing to state propositions requested by the defendants in the following instances:

(*a*) In refusing to charge the jury as follows: there being evidence before the Court tending to support the charge thus requested and the same not having been covered by the Court's general charge.

"The defendants in this case have filed a plea of ten years' prescription urging that they have held the property in question under a just title and in good faith for more than ten years before said this suit was brought. I charge you that the title under which they hold may be denominated a just title, valid on its face, and if you find that they have held such title for more than ten years, in good faith believing that they were the owners of the property, then I charge you that the plea of prescription ought to be sustained, unless the evidence has shown some fact that would prevent the running of prescription against the plaintiffs."

(*b*) The Court erred in refusing to charge the jury in behalf of the defendants as follows:

"In this case, the plaintiffs claim as heirs of their mother, one half interest in the property in question on the ground that it was bought during the lifetime of their mother, during the existence of the community of acquets and gains between her and their father, W. H. Knight, and was sold by their father after the death of their mother. I charge you that in order for them to recover that it is necessary for them to show that the community between their father and mother has been settled and liquidated by the payment of its debts, and until they do so, they cannot recover any interest
94 in any specific piece of property." Which said special charge is fully set forth in defendants' bill of exception No. 5.

5. The Court erred in overruling the motion of the defendants for a new trial, as set *forther* [forth] in defendant's bill of exception No. 6.

6. The Court erred in entering judgment in favor of the plaintiffs and against the defendants.

Respectfully submitted,

ALEXANDER & WILKINSON,
HOLLAND & HOLLAND,
MASON WILLIAMS,
Attorneys for Defendants.

(Indorsed:) No. 276. W. H. Knight, *et al., vs.* Lutcher & Moore L'b'r Co., *et al.* Assignment of errors. Filed Nov. 19th, 1906. W. Jackson, Clerk.

Know all men by these presents, That we, the Lutcher & Moore Lumber Company, *et al.*, G. Bedell Moore and H. J. Lutcher, as principals, and J. D. Wilkinson as surety, are held and firmly bound unto W. H. Knight, *et al.*, in the full and just sum of five thousand dollars to be paid to said W. H. Knight, *et al.*, their certain attorneys, executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 23rd day of November in the year of our Lord one thousand nine hundred and six, 1906.

Whereas, lately at a term of the Circuit Court of the United States for the Western District of Louisiana in a suit depending in said Court, between W. H. Knight, *et al.*, and the Lutcher & Moore Lumber Company, *et al*, a judgment was rendered against the said The Lutcher & Moore Lumber Company *et al.*, and the said The Lutcher & Moore Lumber Company *et al.*, having obtained a writ of error and filed a copy thereof in the clerk's office of the said Court to reverse the judgment in the aforesaid suit (and a citation directed to the said The Lutcher & Moore Lumber Company, *et al.*, citing and admonishing them to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

95 Now, the condition of the above obligation is such, that if the said The Lutcher & Moore Lumber Company, *et al.*, shall prosecute said writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue,

[SEAL.] LUTCHER & MOORE LBR. CO.
[SEAL.] G. BEDELL MOORE &
H. J. LUTCHER,
By J. D. WILKINSON, *Attorney.*
J. D. WILKINSON, *Surety.*

Sealed and delivered in presence of:
W. JACKSON.

Approved:

ALECK BOARMAN, *Judge.*

(Indorsed:) No. 276. W. H. Knight, *et al.*, *vs.* The Lutcher & Moore Lumber Company, *et al.* Bond. Filed Nov. 23rd, 1906. W. Jackson, Clerk.

Extracts from Minutes of Court.

SHREVEPORT, LOUISIANA,
THURSDAY, *October 18th, A. D.* 1906.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, Judge; Hon. M. C. Elstner, U. S. Attorney; A. C. Lea, United States Marshal; Walter Jackson, Clerk.

No. 276.

W. J. KNIGHT
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Motion and rule to show cause filed and set down for hearing on Tuesday next.

96 SHREVEPORT, LOUISIANA,
TUESDAY, *October 23rd, A. D.* 1906.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, Judge; Hon. M. C. Elstner, U. S. Attorney; A. C. Lea, United States Marshal; Walter Jackson, Clerk.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

Answer to rule and motion to suppress testimony of J. A. Lovett filed. Plea of estoppel and *res adjudicata* filed.

SHREVEPORT, LOUISIANA,
WEDNESDAY, *October* 31, *A. D.* 1906.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, Judge; Hon. M. C. Elstner, U. S. Attorney; A. C. Lea, U. S. Marshal; Walter Jackson, Clerk.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

According to previous assignment this case came on at this time to be heard upon the pleadings filed, the several pleas filed being

referred to the merits of the case: Whereupon came the following jurors, to-wit:

I. L. Heidingsfield, R. J. Webb, Geo. W. Newman, and D. I. Porter. The regular panel being then exhausted the Court ordered the marshal to summon twelve (12) tales jurors. Whereupon came the following tales jurors, to-wit: W. W. Otts, Leonard Wortman, H. A. Poleman, C. A. Waits, W. B. McCormick, J. Benson, H. Peisor and J. W. Isgrig; making in all twelve good and lawful men of the district, duly empaneled and sworn. The trial was then proceeded with, the evidence partly adduced and the hour for adjournment having arrived, the case was continued until to-morrow morning for further evidence.

97 SHREVEPORT, LOUISIANA,
THURSDAY, *November 1st, A. D.* 1906.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, Judge; Hon. M. C. Elstner, U. S. Attorney; A. C. Lea, U. S. Marshal; Walter Jackson, Clerk.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO. ET AL.

The trial of this case was this day resumed, the jury being again in Court. Counsel for defendants tender and offer to file an amended answer, to which counsel for plaintiffs object, and the Court being advised in the matter sustained the objection. Counsel for defendant then excepted to the ruling of the Court and reserved a bill of exception. The evidence was then concluded, and after argument of counsel, and charge of the Court, the jury retired to consider of their verdict.

The hour for adjournment having arrived the Court ordered that if the jury should find a verdict after the adjournment of Court they might seal the same and file it with the clerk and then be dismissed until to-morrow morning.

98 SHREVEPORT, LOUISIANA,
FRIDAY, *November 2nd, A. D.* 1906.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, Judge; Hon. M. C. Elstner, U. S. Attorney; A. C. Lea, U. S. Marshal; Walter Jackson, Clerk.

No. 276.

W. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO.

The jury in this case having found a verdict and handed same sealed to the clerk, and the jury being *against* [again] present in

Court, the Court opened the verdict, ordered the same to be read which being done was found to be in words and figures, to-wit:

"We, the jury, find verdict for plaintiff."

Novr. 1st, 1906.

W. B. McCORMICK, *Foreman.*

The Court ordered that the verdict be entered of record and the jury discharged from further consideration of this case.

SHREVEPORT, LOUISIANA,
SATURDAY, *November 3rd, A. D.* 1906.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, Judge; Hon. M. C. Elstner, U. S. Attorney; A. C. Lea, U. S. Marshal; Walter Jackson, Clerk.

No. 276.

WM. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO.

Motion for new trial filed and overruled. Counsel for the defendants excepts to the ruling of the Court and reserves a bill of exceptions. Judgment signed and filed.

99 SHREVEPORT, LOUISIANA,
SATURDAY, *November 3rd, A. D.* 1906.

No. 276.

WM. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER COMPANY.

Upon motion made the Court ordered that counsel for defendant be granted five days in which to prepare and file bills of exception reserved by him in this case.

SHREVEPORT, LOUISIANA,
TUESDAY, *November 6th, A. D.* 1906.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, Judge; Hon. M. C. Elstner, U. S. Attorney; A. C. Lea, U. S. Marshal; Walter Jackson, Clerk.

No. 276.

WM. H. KNIGHT ET AL.
vs.
LUTCHER & MOORE LUMBER CO.

Upon motion duly made the Court ordered that counsel for defendant be and he is allowed ten days additional time in which to

prepare and file bills of exception reserved by him on the trial of this case.

* * * * * * *

100 *Clerk's Certificate.*

UNITED STATES OF AMERICA: ..

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, Walter Jackson, Clerk of the Circuit Court of the United States for the Fifth Circuit and Western District of Louisiana, do hereby certify that the foregoing 122 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case of William H. Knight, *et al., vs.* Lutcher & Moore Lumber Company, *et al.* No. 276 of the docket of the said Court.

Witness my hand and seal of said Court, at the City of Shreveport, Louisiana, this 3rd day of December, A. D. 1906.

[SEAL.] W. JACKSON, *Clerk.*

101 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States Circuit Court of Appeals, for the Fifth Circuit, do hereby certify that the foregoing printed record of 100 pages, in the case of

LUTCHER & MOORE LUMBER COMPANY, Plaintiff in Error,
against
WILLIAM H. KNIGHT ET AL., Defendant- in Error,

Numbered 1629,

was printed under my supervision, and is identical with the printed records upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 23rd day of January, A. D. 1908.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

102 Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1906, at New Orleans, Louisiana, and on the third Monday in November, A. D. 1907, at New Orleans, Louisiana, before the Honorable Don. A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, Circuit Judges.

Be it remembered, that heretofore, to-wit, on the 10th day of December, A. D. 1906, a transcript of record, pursuant to a writ of error to the Circuit Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Fifth Circuit, wherein Lutcher & Moore Lumber Company is plaintiff in error, and William H. Knight, *et al.*, are defendants in error, which said transcript of record was filed and docketed in said Circuit Court of Appeals, as No. 1629.

That thereafter the following proceedings were had in said cause in said Circuit Court of Appeals, viz:

Argument and Submission.

No. 1629.

LUTCHER & MOORE LUMBER CO.
vs.
WILLIAM H. KNIGHT ET AL.

MARCH 27, 1907.

On this day this cause was regularly called, and after argument by Geo. E. Holland, Esq., for plaintiff in error, and M. J. Cunningham, Jr., Esq., for defendants in error, was submitted to the Court.

And thereafter on December 10th, 1907, an opinion of said Circuit Court of Appeals was filed in said cause in words and figures following, to-wit:

103 *Opinion.*

Filed December 10, 1907. Charles H. Lednum, Clerk U. S. Circuit Court of Appeals.

United States Circuit Court of Appeals, Fifth Circuit.

No. 1629.

LUTCHER & MOORE LUMBER COMPANY, Plaintiff in Error,
vs.
WILLIAM H. KNIGHT ET ALS., Defendants in Error.

Writ of Error to the Circuit Court of the United States for the Western District of Louisiana.

Before Pardee, McCormick and Shelby, Circuit Judges.

By the COURT:

After a thorough and attentive consideration of the questions raised on this writ, we are of opinion that the matters of defence relied upon by plaintiff in error on the trial below, in so far as they were not given consideration, were of an equitable nature, not cognizable in a Court of law, we therefore affirm the judgment of the Circuit Court.

And on the 10th day of December, 1907, in the record of the proceedings of said Circuit Court of Appeals, is a judgment in said cause in the words and figures following, to-wit:

Judgment.

No. 1629.

LUTCHER & MOORE LUMBER CO. ET AL.
vs.
WILLIAM H. KNIGHT ET AL.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States, for the Western District of Louisiana, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Circuit Court in this cause be, and the same is hereby affirmed.

It is further ordered and adjudged that the plaintiffs in
104 error, Lutcher & Moore Lumber Company, G. Bedell Moore and H. J. Lutcher, and the surety on the writ of error bond herein, J. D. Wilkinson, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of said Circuit Court.

December 10, 1907.

And on December 26th, 1907, a petition for rehearing was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

Petition for Rehearing.

105 In the United States Circuit Court of Appeals, Fifth Circuit.

1629.

LUTCHER & MOORE LUMBER CO., Plaintiff in Error,
versus
WILLIAM H. KNIGHT ET AL., Defendants in Error.

Petition for Rehearing by George E. Holland, Attorney for Plaintiffs in Error.

U. S. Circuit Court of Appeals. Filed Dec. 26, 1907.
CHARLES H. LEDNUM.

106 In the United States Circuit Court of Appeals, Fifth Circuit.

LUTCHER & MOORE LUMBER CO., Plaintiff in Error,
versus
WILLIAM H. KNIGHT ET AL., Defendants in Error.

Petition for Rehearing.

To the Honorable Circuit Court of Appeals:

Come the plaintiffs in error in the above cause and respectfully move the court to set aside the judgment herein rendered on the 10th day of December, 1907, affirming the judgment of the United States Circuit Court for the Western District of Louisiana; and grant them a rehearing herein; and to permit this motion to be argued orally to the end that *that* said cause be reversed and the
107 plaintiffs in error granted relief not heretofore afforded them in this cause; and as grounds of this motion, the plaintiffs in error respectfully state:

I.

This cause was affirmed by this court, with the statement that it was the opinion of this Honorable Court that the matters of defense relied upon by the plaintiffs in error on the trial below in so far as they were not given consideration were of an equitable nature, not cognizable in a law court.

The trial court held all issues presented in this suit properly triable on the law side of his docket. Plaintiffs in error in the trial court asked permission to stay proceedings in this action until all equitable matters were determined in an action on the equity side of the docket. The trial judge refused this request, being of the

opinion that all the issues were properly triable in this cause. Defendants in error never at any time in the trial court or in this court suggested that any of the matters of defense were equitable and the suggestion first comes from this court in its opinion rendered affirming this cause. To permit this case to be settled in this manner, deprives plaintiffs in error of their rights and forces great hardship upon them, and we suggest to your honor, that in the state of this record, this is a cause wherein both sides of the docket have concurrent jurisdiction over the questions involved and any contention otherwise has been waived by the parties.

II.

108 Plaintiffs in error beg to suggest that if any equitable issues are presented in this suit, they are presented by plaintiff's cause of action, and if this court should refuse to consider all the issues presented because some are cognizable only in equity, then plaintiffs suit should be dismissed or transferred to the equity side of the docket and not defenses of plaintiffs in error, as has been done, for the obvious reason to-wit:

Plaintiff's title, if any they have, is by inheritance from their mother, as shown by their petition claiming the death of the mother and that the property sued for belonged to the community and her interest descended to them. The paper title is shown by their petition to be in the father and under very respectable authority, this statement of their title has been denominated an equitable and not a legal title. (See 62—Texas—613.)

Again plaintiff's cause of action consists solely of the removal of the cloud from their title as set out, caused by the deeds of the plaintiffs in error, from their father, and to accomplish this, evidence *aliunde* these deeds would have to be relied on and this character of action, we believe has been universally held to be cognizable only on the equity side of the docket of the Federal Courts, and a reading of the plaintiffs' petition, will disclose this to be their sole cause of action.

Again, the community interest of the wife's heirs is residuary. (9—La. Ann.—452.) Nothing can be claimed by them from the community of acquets and gains until the payment of all
109 community demands. (27—La. Ann.—624.) They are bound to await liquidation before their share is determined or can be recovered. (32—La. Ann.—848.) This seems to be the Louisiana law, and under it, the defendants in error, if entitled to anything would only be entitled to the residue after the payment of all community debts. They have never been put in possession of the land; there is no allegation that the community debts have been liquidated, and it therefore is purely an equitable question as to what, under the proof, they would be entitled to, if anything.

Again, defendants in error relied upon a deed to their father which showed on its face that the purchase money for the identical land had not been paid; the vendor's privilege outstanding; and under numerous authorities, the vendor retained the legal title and only an equitable title vested in the father of the defendants in

error or the community of himself and his deceased wife, thereby showing defendants in error to hold nothing more than such equitable title; that is, such equity as was in the father.

Plaintiffs in error would be willing to have all matters adjudicated in any court, but they must urgently submit to this Honorable Court that plaintiff's action is one sounding in equity and if either should be forced to that side of the docket, it should be defendants in error, and not your petitioners.

III.

Plaintiffs in error beg to suggest to this Honorable Court
110 that their defenses amount in effect only to a denial of plaintiff's case and the presumptions of fact arising thereon and they beg to suggest that proof of such denials, said proof negativing plaintiff's case can be properly heard in any court and showing this to be true; we beg to invite the court's attention to the fact that under plaintiff's case it was necessary for them to show that the land sued for belonged to the community. The deed to the father during the marriage relation raised in their favor a presumption of fact that this was true. This presumption, however, under authorities too numerous to cite, could be rebutted by any relevant proof showing same to be untrue. It therefore follows that such of the defenses urged as set up facts different from this presumption, were but a rebuttal or denial of the plaintiff's case on that point, and none of same were submitted to the jury, but should have been. Presumptions of fact are not conclusive and when challenged by relevant testimony, they become issues to be determined by the jury, together with other facts in the case. This record presents this character of defense; plaintiffs relying upon a presumption of fact disputed by relevant testimony from the defendants, sharply presenting the issue, and these plaintiffs in error are confronted with the proposition in this court that all of the testimony and pleadings rebutting this presumption of fact are equitable in their nature and not cognizable in law and we respectfully submit to this court that if it has jurisdiction over plaintiffs' action, such jurisdiction
111 ought to be broad enough in its scope to take in and hear all defenses amounting simply to a denial of that action.

Plaintiffs in error show a perfect legal record title. Defendants in error show that for them. This is not disputed. Their ownership and title to the property sued for is regular and is apparent from the deeds under which they hold. It is the title of the defendants in error that goes behind the apparent legal title and undertakes to establish a superior secret title. Certainly, then it is the action of the defendants in error, that sounds in equity and if not, then certainly plaintiffs in error, presenting a perfect legal title, could rebut by allegation and proof in any part any state of facts that would vitiate their title or show it inferior. Defendants in error if entitled to anything, are entitled to the residue after payment of community demands. By their proof, they have shown that the land that they sue for is encumbered by a community debt, a part of the purchase money. Then are we presumptious in asking the

court under this undisputed state of facts, what is the position of the defendants in error?

Bear in mind, plaintiffs in error have a perfect legal title. It is to escape this and go behind it that defendants in error have brought this action. Then how could it be that defendants in error go properly in a court of law and plaintiffs in error improperly there.

IV.

We beg to submit that this Honorable Court erred in not holding that plaintiffs in error could show by parol proof the true
112 consideration for the deed to the father of the defendants in error, such right being well established in law, being in rebuttal of plaintiffs' case, tending to rebut the presumption of fact that the property ever belonged to the community and no state of facts appearing making it necessary for plaintiffs in error to cure their perfect legal title or make it better on its face by any such proof. This proof only placed the jury in a position to determine whether the equitable title presented by defendants in error, the secret title—the title of the silent partner—the title that does not appear of record to warn the purchaser, was such an equity or was such an interest *in rem* as descended by inheritance to defendants in error and constituted in them a valid claim in the property as against the sale of their father and the perfect legal and record title passing from the active partner for value to the plaintiffs in error.

V.

We respectfully submit to this Honorable Court that error has been committed by you in not permitting plaintiff in error to rebut by the relevant testimony offered for that purpose, the presumption of fact arising from the conveyance to the husband during the life of the wife that the equitable title to the property conveyed belonged to the community. Such testimony offered by plaintiffs in error showing conclusively that the conveyance was solely one in trust valid under the decisions of the Supreme Court of Louisiana (37—S. Rep.—47) bestowing upon the trustee, or rather
113 the vendee, the widest latitude of agency. This proof being clearly in rebuttal of the action of defendant in error and their contention that the property in controversy belonged to the community.

It was incumbent upon the defendants in error to show a beneficial title in the property belonging to the community. The negative of this is shown when the survivor in community is shown to hold such title only in trust.

VI.

We submit that where the vendor's privilege is shown in a deed to the husband as outstanding, there is no presumption of law or fact that the community has or ever had any interest in the property more than the equity over and above the outstanding indebt-

edness and in this case, this should have been the limit of recovery allowed the defendants in error.

Fou-teen Thousand Five Hundred of the Fifteen Thousand Dollar consideration recited in the deed to plaintiffs' father showed on the face of that deed to be still unpaid. Five Hundred Dollars of the consideration in the land had been paid by the community, if anything, as this is shown by plaintiffs in offering their proof. This only placed on the face of the deed a contingent remote equity in the community and this is all the interest in the property the proof shows the community ever held.

The Supreme Court of the United States in speaking of this character of title says of it that it is "alienable, descendable and devisable in like manner as real estate held by legal title; but his title
114 is an equitable one, the legal title remaining in the vendor until the payment of the purchase price." (See 23—Wall.—119.)

VII.

We submit that this Honorable Court is in error in not reversing this cause and directing a verdict in favor of plaintiffs in error upon the undisputed record as presented to this court.

It is admitted that plaintiffs in error hold the legal record title without apparent flaw and without break from the sovereignty. They are, and have been for twenty years in constructive, if not actual, possession. They have paid all taxes during this twenty years and borne all burdens of government on the property without any assistance from defendants in error.

They are purchasers in good faith for value. This is *is* the attitude of the plaintiffs in error.

To defeat such a title, defendants in error we believe should have shown the following facts. 1st. Beneficial onerous title vested in the community. 2nd. The death of their mother. 3rd. The heirship. 4th. That they had been placed in possession of the property by the judgment of the court or that the community oved no debts. We believe we are safe in saying that these are necessary requirements before defendants in error would be entitled to any relief. If the assumption above is correct, defendants in error fall with the first proposition. Instead of a beneficial onerous title ves-ing in the community, the undisputed facts show (1st) a remote equity
115 in the community for an inconsiderable part of purchase price, the legal title and vendor's privilege outstanding as a charge against the identical land and as a community debt. (2nd) That the only title ever vesting in the ancestor of plaintiffs was one of agency—a trust relation—barren of any rights in the community. (3rd) A sale by the survivor in community of the identical property in payment of the identical debt shown to be outstanding as expressly authorized and required of him under the Louisiana law.

How, then, in the face of such a case, should defendants in error recover? What are they shown to be entitled to.

BLURR

VIII.

We understand this motion cannot be orally argued. In view of the fact that the case has been disposed of on questions not raised by either party, and not considered when this cause was submitted, and in view of the attitude of the trial court with reference to the defenses being at law and not in equity, and in view of the attitude plaintiffs in error have been placed in, because of this question having been determined adversely to its rights for the first time in this court, we beg permission of the court to orally argue and present the rights of plaintiff in error when this motion is submitted.

IX.

Plaintiffs in error respectfully pray the court to grant this
116 motion for rehearing, pass upon the entire case and grant to these plaintiffs in error such relief as the cause shows them entitled to, either reversing and dismissing plaintiff's cause of action or reversing and rendering this cause in favor of plaintiffs in error or remanding the cause to the trial court, directing what issues should be tried in equity and staying this cause until such trial can be had or instructing the trial court to submit to the jury the issues presented by the proof and giving to these plaintiffs in error a right somewhere at some time to have their rights determined and tried fully, and giving to them such relief as the justice of the cause demands.

Respectfully submitted,

GEO. E. HOLLAND,
Attorneys for Plaintiffs in Error.

I, George E. Holland, Counsel for the Plaintiffs in Error, in the above entitled cause, do hereby certify that I believe that the grounds for a rehearing presented in the foregoing motion are well taken and are good in law.

GEO. E. HOLLAND,
Attorney for Plaintiffs in Error.

117 And on January 1st, 1908, a petition to stay mandate was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

Petition to Stay Mandate.

118 1629.

In the United States Circuit Court of Appeals, Fifth Circuit.

LUTCHER & MOORE LUMBER CO., Plaintiff in Error,
versus
WILLIAM H. KNIGHT ET AL., Defendants in Error,

Motion by Plaintiff in Error to Withhold Mandate, Stay Proceedings, and Order Trial of the Equitable Issues, with Suggestion of Res Judicata and Waiver, by Geo. E. Holland, Attorney for Plaintiffs in Error.

U. S. Circuit Court of Appeals. Filed Jan. 1, 1908.
CHARLES H. LEDNUM, *Clerk.*

119 In the United States Circuit Court of Appeals, Fifth Circuit.

LUTCHER & MOORE LUMBER CO., Plaintiff in Error,
versus
WILLIAM K. KNIGHT ET AL., Defendants in Error.

Motion by Plaintiff in Error to Withhold Mandate, Stay Proceedings, and Order Trial of the Equitable Issues, with Suggestions of Res Judicata and Waiver.

To the Honorable Circuit Court of Appeals:

Come plaintiffs in error and respectfully show to this honorable court the following facts:

First.

That on December 21, 1903, plaintiffs in error filed their original bill against defendants in error in the Circuit Court of the
120 United States for the Western District of Louisiana numbered 286 in equity, in words and figures as follows, to-wit:

THE LUTCHER & MOORE LUMBER CO. ET AL., Plaintiffs,
vs.
WILLIAM H. KNIGHT ET AL., Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Louisiana:

The Lutcher & Moore Lumber Co., Henry J. Lutcher and G. Bedell Moore, bring this, their bill against William H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight Durham and her husband, James Durham, William J. Knight and Dan R. Knight, Sr., whereupon your orators complain and say:

I.

That the Lutcher & Moore Lumber Company is a corporation organized and existing under the laws of the State of Texas, domiciled and doing busi[illegible] at the town of Orange, Orange County, Texas; that Henry J. [illegible]cher and G. Bedell Moore are residents and citizens of the State of Texas, and each and all of the defendants are residents and citizens of the State of Louisiana, all of the defendants residing in Vernon Parish, Louisiana, except Dan R. Knight, who resides in Natchitoches Parish, Louisiana.

121 II.

That therefore, to-wit, on the 20th day of July, 1882, the defendant, Dan R. Knight, and one John A. Lovett, who is now a resident and citizen of the State of Texas, by an act of sale of said date, conveyed to William J. Knight, the following described lands situated in the Parish of Vernon and State of Louisiana and being more particulaaly described as follows, to-wit: The S. W. ¼ of S. E. ¼ and S. E. ¼ of S. W. ¼, Section 5 T. 2 S., Range 11, west. The N. ½ of N. E. ¼ of Sec. 32 and S. E. ¼ and S. ½ of N. E. ¼, Sec. 33, T. 1, S. R. 11, W. and S. W. ¼ of N. E. ¼ and S. E. ¼ of N. W. ¼ and N. E. ¼ of N. W. ¼ and N. E. ¼ of S. W. ¼ and N. W. ¼ of S. E. ¼ and N. ½ of N. E. ¼, Sec. 5, T. 2, S. R. 11, W. and N. E. ¼ of N. E. ¼, Sec. 20, and N. W. ¼ of N. W. ¼, Sec. 21, T. 2, S. R. 11, W. and N. ½ of N. E. ¼, and N. E. ¼ of N. W. ¼, Sec. 21 and N. W. ¼ of N. W. ¼, Sec. 22, T. 2, S. R. 11, W. and fractional N. W. ¼ of fractional N. E. ¼ of Section (Six) 6, T. 2, S. R. 11, W. and S. ½ of N. E. ¼, Sec. 6, T. 2, S. 11, W. and N. W. ¼, of N. E. ¼ of Sec. 34, T. 2, S. R. 11, W. and E. 112 of N. W. ¼, Sec. 20, T. 2, S. R. 11 W. and S. ½ of N. E. ¼ and S. E. ¼ of N. W. ¼ of Sec. 23 and S. W. ¼ of N. W. ¼ of Sec. 24, T. 2, S. R. 11 W. and N. E. ¼ of N. E. ¼ of Sec. 6, T. 2, S. R. 11 W. and W. ½ and N. E. ¼ of S. E. ¼ and N. W. ¼ of S. E. ¼, Sec. 23, T. 2 S. R. 11 W. and 320 acres in Sec-. 33, 28, and 29 T. 1, S. R. 11 W.

122 III.

That at the time said act of sale was passed the said Dan R. Knight, Sr., and John A. Lovett were partners in business, that said John A. Lovett and W. J. Knight were nephews of Dan R. Knight, and that the said property was conveyed to W. J. Knight, without any consideration, passing from said W. J. Knight to the said Knight & Lovett; that said act of sale recited a consideration of $500 cash and a note for $14,500, which was payable on the first day of November, 1882, but that in truth and in fact the $500 cash which was paid in the presence of witness by W. J. Knight to said Knight & Lovett was the money of Knight & Lovett which had previously been given to said W. J. Knight for the purpose of making said cash payment before witness; that the note of $14,500 was executed and delivered to Knight & Lovett, but that the same was returned to the said W. J. Knight without the said W. J. Knight

ever having paid any consideration or any part of the amount to said Knight & Lovett or to anyone else.

That at the time of the passing of said act of sale and previous thereto the said W. J. Knight agreed with Knight & Lovett that he would take the title to said property, as well as a large quantity of movable property, and would hold the same for said Knight & Lovett. Said W. J. Knight further agreed at the time of and prior to said act of sale that he would convert said movable property into money and deliver the same to Knight & Lovett, and that whenever the said Knight & Lovett so desired, he would reconvey to them the land above described; that he would hold said land in trust for said Knight & Lovett and would act as their manager and agent in the matter of said property passed by said act of sale.

123

IV.

And your orators would further show unto the Court that in compliance with said agreement, the said W. J. Knight did convert said movable property into money and turned the same over to Knight & Lovett and that in further compliance with said agreement in regard to said real estate on the 5th day of Feb., 1887, conveyed to Viola P. Knight, the wife of Dan. R. Knight, one-half interest in said above described land, said one-half interest being the interest of Dan R. Knight, the said Dan R. Knight having requested the said W. J. Knight so to do and having authorized the same. That at said time W. J. Knight offered to reconvey to the said J. A. Lovett the one-half interest of said J. A. Lovett in said land, but that the said Lovett at said time desired to sell the same and did sell a one-fourth interest in the entire tract or a one-half of his one-half interest to John C. Knight and directed the said W. J. Knight to execute a deed for said part of said land to said J. C. Knight and in compliance with said request on the 7th day of Feb., 1887, the said W. J. Knight did execute an act of sale to said John C. Knight for a one-half interest in said land. That at the same time the said John A. Lovett sold his remaining one-fourth interest in said land to W. J. Knight, and the said W. J. Knight paid said Lovett at said time for said land, and that no conveyance was executed for the reason that the said W. J. Knight was the holder of the record title; that this was the first time said W. J. Knight ever acquired any real interest in said land, he holding same prior to that time as trustee and agent for said Knight & Lovett.

124

V.

That on the 8th day of March, 1889, Viola P. Knight, the wife of Dan R. Knight, executed a power of attorney in which she gave to said Dan R. Knight complete authority to sell all the lands in her name situated in Vernon Parish, Louisiana, which included one-half interest in the land above described, and that on the 13th day of April, 1889, the said Viola P. Knight, acting by and through her husband and attorneys in fact Dan R. Knight, and the said W. J. Knight and John C. Knight sold and conveyed all of said lands

above described to your orators, Henry J. Lutcher and G. Bedell Moore, and on the first day of April, 1901, the said G. Bedell Moore sold and conveyed, by a warranty deed, his interest in said lands to the Lutcher & Moore Lumber Co., and that the said lands are now owned in fee simple by said Henry J. Lutcher and the Lutcher & Moore Lumber Co.

VI.

That on the 13th day of April, 1889, the date of sale to
125 said Lutcher & Moore, they, the said Henry J. Lutcher and G. Bedell Moore went into possession of said lands and have ever since remained in possession thereof and have paid all taxes due thereon continuously since said date and that the defendants herein since said time have never paid or attempted to pay any taxes of any kind on said lands; that said lands are of the value of more than $10,000.

VII.

And your orators would further show to the court that the defendants, William H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight Durham and her husband, James Durham, on the 11th day of March, 1903, caused to be filed a suit in the District Court of Vernon Parish, Louisiana, twelfth district, against Henry J. Lutcher and the Lutcher & Moore Lumber Co., in which said suit said defendants above named claimed a one-half interest in said land and prayed for title thereto. That said above-named defendants in said suit claimed that they were the heirs of Mary Cain Knight, who was alleged to be the wife of W. J. Knight in 1882, on the date of the sale from Knight & Lovett to said William J. Knight; said above-named defendants claimed in said suit that their said mother died on Aug. 7, 1885, and that their father, William J. Knight, married again on the 18th day of June, 1886, and that therefore said acts of sale above set out from their father William
J. Knight and Viola P. Knight and John C. Knight to
126 Lutcher & Moore conveyed only a one-half interest in said land and they prayed that they be given judgment for the one-half interest of their mother, Mary Cain Knight.

That on March 26, 1903, the said Henry J. Lutcher and the Lutcher & Moore Lumber Company filed their petition for removal asking that said cause filed by said above named defendants in the District Court of Vernon Parish be removed to the United States Circuit Court in and for the Western District of Louisiana, and at the same time said Lutcher and Said Lutcher & Moore Lumber Company tendered a bond as required by the statute and on the same day an order of removal was duly made and said cause was removed to the Circuit Court of the United States in the Western District of Louisiana, and is now pending as cause No. 276 in said United States Circuit Court in and for the Western District of Louisiana at Shreveport on the law side of the docket, the transcript from the State Court having been filed in said court on April 15, 1903; that said Lutcher & Moore Lumber Company called in warranty your orator G. Bedell Moore.

VIII.

And your orators would further show unto the court that at the time they purchased said property in 1889 as above alleged the said W. J. Knight was married and your orators did not know that he had ever had a previous wife, and did not know of her death,
127 and that no administration had ever been taken out on her estate and that there was no public records of any kind or character in Vernon Parish, Louisiana, from which your orators could know or discover that the said W. J. Knight had had a previous wife or that she was dead, and said Henry J. Lutcher and G. Bedell Moore were innocent purchasers of said land without notice and they paid full value therefor.

XI.

Your orators further show that the community of acquets and gains existing between W. J. Knight and his alleged previous wife, Mary Cain Knight, never had any interest or title to said property or any part thereof; that W. J. Knight was simply and solely a trustee and agent of Dan R. Knight and J. A. Lovett; that the said W. J. Knight took said title with the distinct understanding and agreement that he would reconvey to said Knight & Lovett said land at any time they requested him to do so and that if any title vested in said W. J. Knight after the death of his alleged previous wife, Mary Cain Knight, executed said trust by conveying one-half interest in said land to the said Viola P. Knight and by further conveying one-fourth interest in said land to John C. Knight and also by paying the said John A. Lovett for the remaining one-fourth interest in said land, and that his said alleged previous wife had been dead about two years before the said W. J. Knight ever acquired any real title to any part of said land.

128 X.

Your orators would further show that the filing of said suit as herein before alleged, and the setting up of said claim to said land has clouded your orators' title to the same, and that said suit is at law and that your orators' defenses are equitable, and that the pendency of said suit and the cloud cast on your orators' title works irreparable injury and damage to your orators and that they have no adequate remedy at law.

Therefore, in order that your orators may obtain the relief to which they are justly entitled in the premises they pray—

First. That the Court grant a writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said defendants commanding them and each of them, on a certain day and under a certain penalty, in the said writ to be inserted, personally to be and appear before your Honors in this Honorable Court, and then and there full true and perfect answer make, but not upon oath or affirmation, the benefit whereof is expressly waived by your orators, to all and singular the premises, and further to stand, to perform and to abide such further orders, direction and decree therein

as to your Honors shall seem meet and shall be agreeable to equity and good conscience.

Second. That they be required to set forth any and every adverse interest, claim or demand in or to said land to the end that
129 the same may be justly adjudicated and declared null and void as against your orators, and that the title and ownership of your orators in and to said land be established and confirmed as against any and all claims of the defendants or either of them; that said deed from Knight & Lovett to W. J. Knight of the 28th of July, 1882, be declared to convey to said W. J. Knight no real title to said land, but that its effect be declared to consitute said W. J. Knight a trustee, and that all cloud on your orators' title to said lands forever be removed.

Third. That your Honors grant unto your orators your writ of injunction commanding the said defendants and each of them, their agents and attorneys, and all persons under their authority, direction or control to desist and refrain from the prosecution of said suit No. 276 pending at law in the United States Circuit Court in and for the Western District of Louisiana at Shreveport, styled William H. Knight *et al. vs.* Lutcher & Moore Lumber Company *et al.* or from taking any steps in said cause what ever and that upon final hearing said injunction be made perpetual.

Fourth. And that your orators may have such other and further relief, preliminary and final as the Court may seem meet and proper, and which equity may require, and for costs.

Second.

On February 16, 1904, defendants in error here filed
130 their exceptions and demurrers to said bill in said Court in words and figures as follows, to-wit:

No. —. In Equity.

LUTCHER & MOORE LUMBER CO. ET AL., Plaintiffs,
vs.
WILLIAM H. KNIGHT ET AL., Defendants.

Now comes the defendants in the above entitled cause, before answering, and demur to plaintiffs complaint for the following reasons, to-wit:

First. Plaintiffs are estopped from attacking their own title.

Second. The deed under which the defendants claim has been adjudged a good and valid title.

Third. The complaint comes too late, the defendants, having filed a suit in law, and the plaintiffs have answered to their demands, in which they set up a defense, which if sustained will be adequate in law.

Fourth. That the allegations of plaintiffs bill of complaint is simply a reiteration of their answer in suit No. 276 in the Circuit Court of the United States for the Western District of Louisiana, at law, and that the allegation therein contained and set forth set

up a plea of estoppel *in pias* and constitute a complete and adequate remedy at law.

Fifth. That the bill of complaint discloses no right or cause of action.

Finally—Defendants especially demur to the right of
131 plaintiffs to bring their bill in equity as neither the law nor the jurisprudence of this state, authorizes or provides suits in equity, and especially is this so as to real estate situated in the State. Hence, defendants *prove,* that the injunction herein asked for be denied. That this branch of the case be dismissed and plaintiffs cost and suit No. 276 be proceeded with according to law.

Third.

On February 16, 1904, an order was made by said Honorable Court in words and figures as follows, to-wit:

No. 286.

LUTCHER & MOORE LUMBER CO.
vs.
WM. J. KNIGHT ET AL.

This cause came on at this time to be heard upon the demurrer heretofore filed by the defendants. Whereupon, after argument of counsel for both plaintiff and defendants, the court sustained the demurrer and dismissed the suit at cost of complainant. Counsel for plaintiff excepts to the ruling of the court, and reserved a bill of exceptions.

Fourth.

In verification of the foregoing statements, certified copies of said documents under the hand and seal of the clerk of the United States Circuit Court for the Western District of Louisiana are filed with this motion and are prayed to be considered as a part hereof,
132 the same being copied verbatim in this motion for the convenience of the court.

Fifth.

Plaintiffs in error show to your Honors that they have been diligent in presenting their defense in this cause and by the petition herein set out, have asked leave of the Honorable Circuit Court to hear and determine such defenses in equity, which request was refused by said court as shown by its order entered herein.

Sixth.

Plaintiffs in error suggested to this Honorable Court that the ruling of the trial court on these questions is as to same *res judicata.* That said judgment is final and a contrary holding by this Honorable Court ought not to be made because of that fact, and plaintiffs in error further suggest to this Honorable Court that defendants in error have waived by the proceedings herein set out the jurisdiction

at law of the defense set up by plaintiffs in error and submitted themselves to such jurisdiction, and ought now in good conscience abide thereby.

Seventh.

Plaintiffs in error pray the court to consider this motion in connection with the petition for rehearing filed herein and if this Honorable Court should still be of opinion that the defenses urged by plaintiffs in error should be tried in equity, then they pray this Honorable Court to issue an order staying this suit and with-
133 holding your mandate until such trial in equity can be had and that your Honors certify to the trial court the questions to be tried in equity as presented by said defenses and instructing the trial court to proceed with the trial of same.

Respectfully submitted.

GEO. E. HOLLAND,
Attorney for Plaintiffs in Error.

I, George E. Holland, Attorney for Plaintiffs in Error, do hereby certify that in my judgment the foregoing motion is well taken and is good in law.

GEO. E. HOLLAND,
Attorney for Plaintiffs in Error.

134 And thereafter on January 1st, 1908, a certified copy of the original bill was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

Certified Copy Original Bill.

In the Circuit Court of the United States in and for the Western District of Louisiana, at Alexandria.

In Equity.

THE LUTCHER & MOORE LUMBER CO. ET AL., Plaintiffs,
vs.
WILLIAM H. KNIGHT ET AL., Defendants.

To the Hon. the Judges of the Circuit Court of the United States, for the Western District of Louisiana:

The Lutcher & Moore Lumber Co., Henry J. Lutcher and G. Bedell Moore bring this their bill against William H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight Durham and her husband, James Durham, William J. Knight and Dan R. Knight Sr., whereupon your orators complain and say.

I. That the Lutcher & Moore Lumber Co. is a corporation organized and existing under the laws of the State of Texas, domiciled and doing business at the town of Orange, — County, Texas; that Henry J. Lutcher and G. Bedell Moore are residents and citizens of the State of Texas and each and all of the defendants are residents and

citizens of the State of Louisiana, all of the defendants residing in Vernon Parish, Louisiana, except Dan R. Knight, who resides in Natchitoches Parish, Louisiana.

II. That heretofore, to-wit, on the 20th day of July, 1882, the defendant, Dan R. Knight and one John A. Lovett, who is now a resident and citizen of the State of Texas, by an act of sale of said date conveyed to William J. Knight, the following described lands situated in the Parish of Vernon and State of Louisiana, and being more particularly described as follows, to-wit: The S. W. ¼ of S. E. ¼ & S. E. ¼ of S. W. ¼, Sec. 5, T. 2, S., Range 11, west. The N. ½ of N. E. ¼ of Sec. 32, & S. E. ¼ & S. ½ of N. E. ¼, Sec. 33, T. 1, S., R. 11, W., & S. W. ¼ of N. E. ¼ & S. E. ¼ of N. W. ¼ and N. E. ¼ of N. W. ¼ and N. E. ¼ of S. W. ¼
135 & N. W. ¼ of S. E. ¼ & N. ½ of N. E. ¼, Sec. 5, T. 2, S., R. 11, W., and N. E. ¼ of N. E. ¼ Sec. 20, & N. W. ¼ of N. W. ¼ Sec. 21, T. 2, S. R. 11, W., and N. ½ of N. E. ¼ and N. E. ¼ of N. W. ¼, Sec. 21 & N. W. ¼ of N. W. ¼, Sec. 22, T. 2, S. R. 11, W., and fractional N. W. ¼ of fractional N. E. ¼ of Section (six) 6, T. 2, S. R. 11, W., and S. ½ of N. E. ¼, Sec. 6, T. 2, S. R. 11, W., and N. W. ¼ of N. E. ¼ of Sec. 34, T. 2, S. R. 11, W., and E. ½ of N. W. ¼, Sec. 20, T. 2, S. R. 11, W., and S. ½ of N. E. ¼ & S. E. ¼ of N. W. ¼ of Sec. 23, and S. W. ¼ of N. W. ¼ of Sec. 24, T. 2, S. R. 11, W., and N. E. ¼ of N. E. ¼ of Sec. 6, T. 2, S. R. 11, W., and W. ½ of S. W. ¼ of Sec. 17, N. E. ¼ of S. E. ¼, Sec. 18, T. 2, S. R. 11, W., and W. ½ and N. E. ¼ of S. E. ¼ & N. W. ¼ of S. E. ¼, Sec. 23, T. 2, S. R. 11, W., and 320 acres in Sec. 33, 28 & 29, T. 1, S. R. 11, W.

III. That at the time said act of sale was passed, the said Dan R. Knight, Sr., and John A. Lovett were partners in business, that said John A. Lovett and W. J. Knight were nephews of Dan R. Knight and that said property was conveyed to W. J. Knight without any consideration passing from said W. J. Knight to the said Knight & Lovett; that said act of sale recited a consideration of $500.00 cash and a note for $14500, which was payable on the first day of November, 1882, but that in truth and in fact the $500.00 cash which was paid in the presence of witnesses by W. J. Knight, to said Knight & Lovett was the money of Knight & Lovett which had previously been given to said W. J. Knight for the purpose of making said cash payment before witnesses; that the note of $14500 was executed and delivered to Knight & Lovett, but that the same was returned to the said W. J. Knight without the said W. J. Knight ever having paid any consideration of any part of the amount to said Knight & Lovett or to any one else.

That at the time of the passing of said act of sale and previous thereto, the said W. J. Knight agreed with Knight & Lovett that he would take the title to said property, as well as a large quantity of movable property, and would hold the same for said Knight & Lovett. Said W. J. Knight further agreed at the time of and prior to said act of sale that he would convert said movable property into money and deliver the same to Knight & Lovett, and that whenever the said Knight & Lovett so desired, he would reconvey to them the land

above described; that he would hold said land in trust
136 for said Knight & Lovett, and would act as their manager and agent in the matter of said property passed by said act of sale.

IV. And your orators would further show unto the Court that in compliance with said agreement the said W. J. Knight did convert said moveable property into money and turned the same over to Knight Lovett, and that in further compliance with said agreement in regard to said real estate on the 5th day of Feb., 1887, conveyed to Viola P. Knight, the wife of Dan R. Knight, one-half interest in said above described land, said one-half interest being the interest of Dan R. Knight, the said Dan R. Knight having requested the said W. J. Knight, so to do and having authorized the same. That at said time W. J. Knight offered to reconvey to the said J. A. Lovett the one-half interest of said J. A. Lovett in said land, but that the said Lovett at said time desired to sell the same and did sell a one-fourth interest in the entire tract or a one-half of his one-half interest to John C. Knight and directed the said W. J. Knight to execute a deed for said part of said land to said J. C. Knight and in compliance with said request on the 7th day of Feb., 1887, the said W. J. Knight did execute an act of sale to said John C. Knight for a one-half interest in said land. That at the same time the said John A. Lovett sold his remaining one-fourth interest in said land to W. J. Knight, and the said W. J. Knight paid said Lovett at said time for said land, and that no conveyance was executed for the reason that the said W. J. Knight was the holder of the record title; that this was the first time said W. J. Knight ever acquired any real interest in said land, he holding same prior to that time as trustee and agent for said Knight & Lovett.

V. That on the 8th day of March, 1889, Viola P. Knight, the wife of Dan R. Knight executed a power of attorney in which she gave to said Dan R. Knight complete authority to sell all the lands in her name situated in Vernon Parish, Louisiana, which included one-half interest in the land above described, and that on the 13th day of April, 1889, the said Viola P. Knight acting by and through her husband and attorney in fact Dan R. Knight, and the said W. J. Knight and John C. Knight, sold and conveyed all of said lands above described to your orators, Henry J. Lutcher and G. Bedell Moore, and on the first day of April, 1901, the said G. Bedell Moore sold and conveyed, by a waranty deed, his interest in said
137 lands to the Lutcher & Moore Lumber Co., and that the said lands are now owned in fee simple by said Henry J. Lutcher and the Lutcher & Moore Lumber Co.

VI. That on the 13th day of April, 1889, the date of sale to said Lutcher & Moore, they the said Henry J. Lutcher and G. Bedell Moore went into possession of said lands and have ever since remained in possession thereof and have paid all taxes due thereon continuously since said date, and that the defendants herein since said time have never paid or attempted to pay any taxes of any kind on said lands. That said lands are of the value of more than $10,000.

VII. And your orators would further show to the Court that the defendants, William H. Knight, John A. Knight, Miss Stella Knight, Mrs. Florence Knight Durham and her husband, James Durham, on the 11th day of March, 1903, caused to be filed a suit in the District Court of Vernon Parish, Louisiana, twelfth district, against Henry J. Lutcher and the Lutcher & Moore Lumber Co., in which said suit said defendants above named claimed a one-half interest in said land and prayed for title thereto. That said above named defendants in said suit claimed that they were the heirs of Mary Cain Knight, who was alleged to be the wife of W. J. Knight, in 1882, on the date of the sale from Knight & Lovett to said William J. Knight; said above named defendants claimed in said suit that their said mother died on Aug. 7, 1885, and that their father, William J. Knight, married again on the 18th day of June, 1886, and that therefore said acts of sale above set out from their father, William J. Knight and Viola P. Knight and John C. Knight to Lutcher & Moore conveyed only a one-half interest in said land, and they prayed that they be given judgment for the one-half interest of their mother, Mary Cain Knight.

That on March 26th, 1903, the said Henry J. Lutcher and the Lutcher & Moore Lumber Co., filed their petition for removal asking that said cause filed by said above named defendants in the District Court of Vernon Parish, be removed to the U. S. Circuit Court in and for the Western District of Louisiana, and at the same time said Lutcher and said Lutcher & Moore Lumber Co. tendered a bond as required by the statute and on the same day an order of removal was duly made and said cause was removed to the Circuit Court of the U. S., in the Western District of Louisiana, and is now pending as Cause No. 276, in said U. S. Circuit Court in and for the
138 Western District of Louisiana, at Shreveport, on the law side of the docket, the transcript from the State Court having been filed in said Court on April 15th, 1903; that said Lutcher & Moore Lumber Co. called in warranty your orator G. Bedell Moore.

VIII. And your orators would further show unto the Court that at the time they purchased said property in 1889, as above alleged the said W. J. Knight was married and your orators did not know that he had ever had a previous wife, and did not know of her death, and that no administration had ever been taken out on her estate and that there was no public records of any kind or character in Vernon Parish, Louisiana, from which your orators could know or discover that the said W. J. Knight had had a previous wife or that she was dead, and that said Henry J. Lutcher and G. Bedell Moore were innocent purchasers of said land without notice and they paid full value therefor.

IX. Your orators further show that the community of aquets and gains existing between W. J. Knight, and his alleged previous wife, Marcy Cain Knight, never had any interest in or title to said property or any part thereof; that W. J. Knight was simply and solely a trustee and agent of Dan. R. Knight and J. A. Lovett; that the said W. J. Knight took said title with the distinct understanding

and agreement that he would reconvey to said Knight & Lovett said land at any time they requested him to do so, and that, if any title vested in said W. J. Knight, it was charged with said trust, and that the said W. J. Knight after the death of his alleged previous wife Mary Cain Knight, executed said trust by conveying one-half interest in said land to the said Viola P. Knight, and by further conveying one-fourth interest in said land to John C. Knight and also by paying the said John A. Lovett for the remaining one-fourth interest in said land, and that his said alleged previous wife had been dead about two years before the said W. J. Knight ever acquired any real title to any part of said land.

X. Your orators would further show that the *tiling* [filing] of said suit as hereinbefore alleged, and the setting up of said claim to said land has clouded your orators' title to the same, and that said suit is at law, and that your orators' defenses are equitable, and that the pendency of said suit and the cloud cast on your orators'
139 title work irreparable injury and damage to your orators, and that they have no adequate remedy at law.

Therefore, in order that your orators may obtain the relief to which they are justly entitled in the premises they pray.

First. That the Court grant a writ of subpœna issuing out of and under the seal of this Honorable Court to be directed to the said defendants, commanding them and each of them on a certain day and under a certain penalty in the said writ to be inserted, personally to be and appear before your Honors in this Honorable Court, and then and there full, true and perfect answer make, but not upon oath or *affamation* [affirmation], the benefit whereof is expressly waived by your orators, to all and singular the premises and further to stand to perform and to abide such further orders, direction and decree therein as to your Honors shall seem meet and shall be agreeable to equity and good conscience.

Second. That they be required to set forth any and every adverse interest, claim or demand in or to said land to the end that the same may be justly adjudicated and declared null and void as against your orators, and that the title and owership of your orators in and to said land be established and confirmed as against any and all claims of the defendants or either of them; that said deed from Knight & Lovett to W. J. Knight, of the 28th of July, 1882, be declared to convey to said W. J. Knight no real title to said land, but that its effect be declared to constitute said W. J. Knight, a trustee, and that all cloud on your orators' title to said lands forever be removed.

Third. That your Honors grant unto your orators your writ of injunction commanding the said defendants and each of them, their agents and attorneys, and all persons under their authority, direction or control to desist and refrain from the prosecution of said suit No. 276, pending at law in the U. S. Circuit Court, in and for the Western District of Louisiana, at Shreveport, styled William H. Knight, *et al., vs.* Lutcher & Moore Lumber Co. *et al.*, or from taking any steps in said cause whatever, and that upon final hearing said injunction be made perpetual.

Fourth. And that your orators may have such other and further

relief, preliminary and final as to the Court may seem
140 meet and proper, and which equity may require, and for costs.

HOLLAND & HOLLAND,
ALEXANDER & WILKINSON,
DAVIS & WILLIAMS,
Solicitors for Complainants.

THE STATE OF TEXAS,
County of Orange:

Before me the undersigned authority on this day personally appeared E. W. Brown, who being by me duly sworn on oath states that he is vice-president and agent of the Lutcher & Moore Lumber Co. and that he has read the allegations of fact in the foregoing bill and that they are true.

E. W. BROWN.

Sworn to and subscribed before me, this the 15th day of December, 1903.

J. A. HOLLAND,
Notary Public, Orange County, Texas.

In Equity.

THE LUTCHER & MOORE LUMBER COMPANY ET AL.
vs.
WILLIAM H. KNIGHT ET AL.

On reading and considering the foregoing bill and the affidavit thereto, it is ordered that the defendants be each cited and served according to law and that they and each of them show cause, if any they have at Alexandria, Louisiana, on the fourth Monday in January, 1904, why they and each of them should not be perpetually enjoined and prohibited from any further proceedings in said Cause No. 276, entitled Wm. H. Knight, *et al., vs.* Lutcher & Moore Lumber Company, *et al.*, and why the prayer of the bill should not be granted to complainants and the relief afforded them and so awarded in the manner and form as set forth in the foregoing bill of complaint.

Done and signed officially this the 21st day of December, 1903.

ALECK BOARMAN,
Judge, U. S. Circuit Court.

(Indorsed:) Lutcher & Moore Lumber Company, *et al., vs.* Wm. H. Knight, *et al.* No. 286. Original Bill. Filed Dec. 21st, 1903. E. C. Jackson, Dy. Clerk.

141 I, Walter Jackson, clerk of the United States Circuit Court, Fifth Circuit, Western District of Louisiana, do hereby certify that the above and foregoing eight (8) pages, contain a true, full and correct copy of the original bill and order thereon, in a

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cause entitled Lutcher & Moore Lumber Company, *et al., vs.* William H. Knight, *et al.,* No. 286, on the Equity Docket of said Court, as the original of same appears on file in my office.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 23rd day of December, A. D. 1907.

[SEAL.] W. JACKSON, *Clerk.*

The foregoing has the following indorsements, to-wit: No. 286. Lutcher & Moore Lumber Company, *et al., vs.* Wm. H. Knight, *et al.* Original Bill. Filed Dec. 21st, 1903. E. C. Jackson, Dy. Clerk. No. 1629. U. S. Circuit Court of Appeals. Filed Jan. 1, 1908. Charles H. Lednum, Clerk.

And thereafter on January 1st, 1908, there was filed in said cause in said Circuit Court of Appeals a certified copy of defendants' demurrer to complaint in words and figures following, to-wit:

Certified Copy Defendants' Demurrer to Complaint.

In the Circuit Court of the United States, in and for the Western District of Louisiana, at Shreveport.

No. —. In Equity.

LUTCHER & MOORE LUMBER CO. ET AL., Plaintiff,
vs.
WILLIAM H. KNIGHT ET AL., Defendants.

Now comes the defendants in the above entitled cause, before answering and demur to plaintiffs' complaint for the following reasons, to-wit:

First. Plaintiffs are estopped from attacking their own title.

Second. The deed under which the defendants claim has been adjudged a good and valid title.

Third. The complaint comes too late, the defendants
142 having filed a suit in law, and the plaintiff's have answered to their demands, in which they set up a defence, which, if sustained will — adequate in law.

Fourth. That the allegations of plaintiffs bill of complaint is simply a reiteration of their answer in suit No. 276, in the Circuit Court of the United States for the Western District of Louisiana, at law, and that the allegations therein contained and set forth set up a plea of estoppel *in pais,* and constitute a complete and adequate remedy at law.

Fifth. That the bill of complaint discloses no right or cause of action.

Finally Defendants especially demur to the right of plaintiffs to bring their bill in equity as neither the law nor the jurisprudence of this state, authorizes or provides suits in equity, and especially is this so as to real estate situated in the state. Hence Def'ts prove that the injunction herein asked for be denied. That this branch

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of the case be dismissed and plaintiffs cost and suit No. 276 be proceeded with according to law.

M. J. CUNNINGHAM, JR.,
MURFF & WEBB, *Att'y-*.

Indorsed: No. 286. Lutcher & Moore Lumber Company, *et al.*, *vs.* Wm. H. Knight *et al.* Demurrer. Filed Feb. 16/04. W. Jackson, Clerk.

I, Walter Jackson, clerk of the United States Circuit Court, Fifth Circuit, Western District of Louisiana, do hereby certify that the above and foregoing page contain- a true, full and correct copy of the demurrer in a cause entitled Lutcher & Moore Lumber Company, *et al.*, *vs.* William H. Knight *et al.*, as the original of same appears on file in my office.

Witness my hand and seal of office at the city of Shreveport, Louisiana, this 24th day of December, A. D. 1907.

[SEAL.] W. JACKSON, *Clerk*.

The foregoing has the following indorsements, to-wit: No. 1629. U. S. Circuit Court of Appeals. Filed Jan. 1, 1908. Charles H. Lednum, Clerk.

143 And on January 1st, 1908, a certified copy of order on defendants' demurrer to complaint was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

Certified Copy Order on Defendants' Demurrer to Complaint.

Extract from Minutes of Court.

SHREVEPORT, LOUISIANA,
TUESDAY, *February 16th*, A. D. 1904.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, Judge; M. C. Elstner, U. S. Attorney; B. F. Oneal, U. S. Marshal; W. Jackson, Clerk.

No. 286.

LUTCHER & MOORE LUMBER CO.
vs.
WM. J. KNIGHT ET AL.

This cause come- on at this time to be heard upon the demurrer heretofore filed by the defendants. Whereupon, after argument of counsel for both plaintiff and defendants, the Court sustained the demurrer and dismissed the suit at cost of complainant. Counsel for plaintiff excepts to the ruling of the Court, and reserves a bill of exceptions.

I, Walter Jackson, clerk of the United States Circuit Court, Fifth Circuit, Western District of Louisiana, do hereby certify that the above and foregoing is a true and correct extract from the Minute Book of the United States Circuit Court, Fifth Circuit, Western District of Louisiana, for the Shreveport Division.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 24th day of December, A. D. 1907.

[SEAL.] W. JACKSON, *Clerk.*

The foregoing has the following indorsements, to-wit: No. 1629. U. S. Circuit Court of Appeals. Filed Jan. 1, 1908. Charles H. Lednum, Clerk.

144 On January 1st, 1908, a certified copy of agreement and motion to transfer cause was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

Certified Copy Agreement and Motion to Transfer Cause.

In the Circuit Court of the United States in and for the Western District of Louisiana, at Alexandria.

In Equity.

THE LUTCHER & MOORE LUMBER CO. ET AL., Plaintiffs,
vs.
WILLIAM H. KNIGHT ET AL., Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Louisiana.

Now comes the parties, plaintiffs and defendants in the above styled cause by counsel, and moves and prays that said cause be continued until the fourth Monday in February, and that same be heard before your Honors at that time in session at the City of Shreveport, Louisiana.

ALEXANDER & WILKINSON,
Att'ys for Pl'ffs.
MURFF & WEBB, *Att'ys for Def'ts.*

Indorsed: No. 286. In Equity. The Lutcher & Moore L'b'r Co., *et al., vs.* William H. Knight, *et al.* Agreement & Motion to transfer. Filed Jan. 28th, 1904. W. Jackson, Clerk.

I, Walter Jackson, Clerk of the United States Circuit Court, Fifth Circuit, Western District of Louisiana, do hereby certify that the above and foregoing is a true, full and correct copy of the agreement & motion to transfer, in a cause entitled The Lutcher & Moore Lumber Co., *et al., vs.* William H. Knight, *et al.,* No. 286, on the docket of said Court, as the original of same appears on file in my office.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 24th day of December, A. D. 1907.

[SEAL.] W. JACKSON, *Clerk.*

The foregoing has the following indorsements, to-wit: No. 1629. U. S. Circuit Court of Appeals. Filed Jan. 1, 1908. Charles H. Lednum, Clerk.

145 And on January 1st, 1908, a certified copy of judgment was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

Certified Copy Judgment.

In the United States Circuit Court in and for the Western District of Louisiana, City of Shreveport.

No. 276.

WM. H. KNIGHT ET ALS.
vs.
H. J. LUTCHER ET ALS.

In the above cause by virtue of the verdict of the jury finding in favor of the plaintiffs in the above cause, the law and evidence being in favor thereof, it is ordered, adjudged and decreed that the plaintiffs, Wm. H. Knight, John Knight, Miss Stella Knight and Mrs. Florence Knight, wife of James Durham, do have and recover judgment against the defendants, H. J. Lutcher and the Lutcher & Moore Lumber Company, decreeing the plaintiff- to be the owners of an undivided one-half interest in and to the following described lands set forth in the plaintiffs' petition in this cause as follows, to-wit:

South half of Section Thirty-three (33), in Township One (1), South of Range Eleven (11), West; Southeast quarter of northwest quarter, southwest quarter of northwest quarter, west half of southeast quarter and east half of southwest quarter of Section Five (5); west half of southwest quarter of [Section] Seventeen (17); northeast quarter of southeast quarter of Section Eighteen (18), east half of northwest quarter and northeast quarter of northeast quarter of Section Twenty (20), north half of north half of Section Twenty-one (21), northwest quarter of northwest quarter of Section Twenty-two (22) south half of the northeast quarter, southeast quarter of northwest quarter, west half of southwest quarter, northeast quarter of northwest quarter and the northwest quarter of southeast quarter of Section Twenty-three (23), southwest quarter of northwest quarter of Section Twenty-four (24), and the northwest quarter of the northeast quarter of Section Thirty-four (34), all in Township Two (2), south of Range Eleven (11), West; in the Parish of Vernon, State of Louisiana, and as such that they be put in possession of the same.

It is further ordered, adjudged and decreed that the defendants pay all cost of the suit.

146 Thus done read and signed on this 3rd of November, 1906.

ALECK BOARMAN, *Judge.*

Indorsed: No. 276. Wm. H. Knight, *et als., vs.* H. J. Lutcher, *et als.* Judgment. Filed Nov. 3rd, 1906. E. C. Jackson, D'y Clerk.

I, Walter Jackson, clerk of the United States Circuit Court, Fifth Circuit, Western District of Louisiana, do hereby certify that the above and foregoing two pages contain a true, full and correct copy of the original judgment in the suit, William H. Knight, *et als., vs.* H. J. Lutcher, *et als.*, No. 276, on the docket of said Court, as the same appears on file and of record in my office.

Witness my hand and seal of office, at the City of Shreveport, Louisiana, this 15th day of March, A. D. 1907.

[SEAL.] W. JACKSON, *Clerk.*

The foregoing has the following indorsements, to-wit: No. 1629. U. S. Circuit Court of Appeals. Filed Jan. 1, 1908. Charles H. Lednum, Clerk.

And on January 22, 1908, an order staying mandate was made in said cause in words and figures following, to-wit:

Order Staying Mandate.

JANUARY 22, 1908.

No. 1629.

LUTCHER & MOORE LUMBER COMPANY
vs.
WILLIAM H. KNIGHT ET AL.

Ordered, That the issuance of mandate in this cause be, and it is hereby, stayed for thirty days from this date.

147 I, Charles H. Lednum clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the 45 pages next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the Court (except the transcript of the record from the Circuit Court of the United States, for the Western District of Louisiana, in a certain cause in said Court, numbered 1629, wherein Lutcher & Moore Lumber Company, is plaintiff in error, and William H. Knight *et al.*, are defendants in error, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the

City of New Orleans, Louisiana, in the Fifth Circuit, this 23rd day of January, A. D. 1908.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

148 In the Supreme Court of the United States.

#665.

LUTCHER & MOORE LUMBER CO. ET AL., Petitioners,
versus
WILLIAM H. KNIGHT ET AL., Respondents.

It is agreed between the undersigned counsel for Petitioners and Respondents, respectively, that the certified transcript of the record in the above entitled and numbered cause, now on file in the office of the Clerk of the Supreme Court of the United States, shall be accepted as a return to the writ of certiorari granted herein on April 6th, 1908.

Washington, D. C., April 10, 1908.

A. P. PUJO,
PUJO, MOSS & SUGAR, AND
GEO. E. HOLLAND,
Counsel for Petitioners.
M. J. CUNNINGHAM, JR., AND
A. J. MURFF,
Counsel for Respondents.

Leesville, Louisiana, April 20, 1908.

Endorsed: No. 1629. Filed 22 day of April, 1908. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

A True Copy: Attest with seal this 22nd day of April, 1908.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM, *Clerk.*

149 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Lutcher & Moore Lumber Company is plaintiff in error and William H. Knight *et al.* are defendants in error, which suit was

removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Western District of Louisiana, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the
150 Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighth day of April, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

151 [Endorsed:] 665, 21068. Apr. 24, '08. File. No. 21,068. Supreme Court of the United States. No. 665, October Term, 1907. Lutcher & Moore Lumber Co. *et al. vs.* William H. Knight *et al.* Writ of Certiorari. Filed 22 day of April, 1908. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

In the United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of said court, do hereby certify that I received the within writ on the 22nd day of April, A. D. 1908, and inasmuch as the attorneys for the parties therein named have, by stipulation in writing this day filed in my office, agreed that the certified transcript of the record in the case named in this writ, now on file in the office of the Clerk of the Supreme Court of the United States, shall be accepted as a return to the writ of certiorari granted therein on April 6, 1908, Therefore, in compliance with said writ, and by direction of the Judges of this court, I have made and attach hereto a certified copy of said stipulation as a return to the within writ.

Witness my official signature and the seal of said court this the 22nd day of April, A. D. 1908.

[Seal United States Circuit Court of Appeals,
Fifth Circuit.]

CHARLES H. LEDNUM, *Clerk.*

152 [Endorsed:] File No. 21,068. Supreme Court U. S., October Term, 1909. Term No. 101. Lutcher & Moore Lumber Co. *et al. vs.* William H. Knight *et al.* Writ of certiorari & return. Filed April 24th, 1908.